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16 INLAND EMPIRE WATERKEEPER and ORANGE COUNTY COASTKEEPER

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

INLAND EMPIRE WATERKEEPER, a  
program of ORANGE COUNTY  
WATERKEEPER; ORANGE COUNTY  
WATERKEEPER, a California non-profit  
corporation;

Plaintiffs,

v.

ROBERTSON'S READY MIX, LTD., a  
California Limited Partnership,

Defendant.

Civil Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.*)**

1 ORANGE COUNTY COASTKEEPER

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4 3151 Airway Avenue, Suite F-110

5 Costa Mesa, California 92626

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1 Inland Empire Waterkeeper and Orange County Coastkeeper (“Waterkeeper” or  
2 “Plaintiffs”), by and through its counsel, hereby allege:

3 **I. JURISDICTION, VENUE, AND RELATED CASES**

4 1. This is a civil suit brought under the citizen suit enforcement provision of  
5 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act”  
6 or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the  
7 parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and  
8 2201 (an action for declaratory and injunctive relief arising under the Constitution and  
9 laws of the United States).

10 2. On June 3, 2016, Waterkeeper issued a 60-day Notice of Violation and  
11 Intent to File Suit Under the Clean Water Act letter (“Notice Letter”) to Robertson’s  
12 Ready Mix, Ltd. (“Defendant”). The Notice Letter informed Defendant of its violations  
13 of California’s General Permit for Discharges of Storm Water Associated with Industrial  
14 Activities (*National Pollutant Discharge Elimination System (“NPDES”) General Permit*  
15 *No. CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-*  
16 *DWQ, as amended by Order No. 2014-0057-DWQ*) (hereinafter “Storm Water Permit”)  
17 and the Clean Water Act at its facility located at 1675 S. State St., San Jacinto, California  
18 92383 (“Facility”). The Notice Letter informed Defendant of Waterkeeper’s intent to file  
19 suit against Defendant to enforce the Storm Water Permit and the Clean Water Act.

20 3. The Notice Letter was also sent to the registered agent for Defendant, the  
21 Administrator of the United States Environmental Protection Agency (“EPA”), the  
22 Administrator of EPA Region IX, the Executive Director of the State Water Resources  
23 Control Board (“State Board”), and the Executive Officer of the Regional Water Quality  
24 Control Board, Santa Ana Region (“Regional Board”), as required by 40 C.F.R.  
25 § 135.2(a)(1) and Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A). The Notice  
26 Letter is attached hereto as **Exhibit A** and is incorporated herein by reference.

27 4. More than sixty (60) days have passed since the Notice Letter was served on  
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1 Defendant and the State and Federal agencies. Waterkeeper is informed and believes, and  
2 thereon alleges, that neither the EPA nor the State of California has commenced or is  
3 diligently prosecuting an action to redress the violations alleged in the Notice Letter and  
4 in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not barred by any prior  
5 administrative penalty under Section 309(g) of the CWA. 33 U.S.C. § 1319(g).

6 5. Venue is proper in the Central District of California pursuant to Section  
7 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are  
8 located within this judicial district.

9 6. Waterkeeper seeks relief for Defendant's substantive and procedural  
10 violations of the Storm Water Permit and the Clean Water Act resulting from  
11 Defendant's operations at its Facility.

12 7. On April 25, 2016, Inland Empire Waterkeeper and Orange County  
13 Coastkeeper, (collectively, "Waterkeeper") filed a Complaint for Declaratory and  
14 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
15 No. 5:16-cv-00825-DMG-JCx, *Inland Empire Waterkeeper et al. v. Robertson's Ready*  
16 *Mix, Ltd.*, which alleges substantive and procedural violations of the Storm Water Permit  
17 and the Clean Water Act resulting from Defendant's operations at an industrial facility  
18 located at 6120 20th Street, Riverside, California 92509. The parties and claims at issue  
19 in Waterkeeper's pending complaint dated April 25 are related to the parties and claims at  
20 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has  
21 been submitted concurrently herewith.

22 8. On May 25, 2016, Waterkeeper filed a Complaint for Declaratory and  
23 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
24 No. 5:16-cv-01085-DMG-JC, *Inland Empire Waterkeeper et al. v. Robertson's Ready*  
25 *Mix, Ltd.*, which alleges substantive and procedural violations of the Storm Water Permit  
26 and the Clean Water Act resulting from Defendant's operations at an industrial facility  
27 located at 2601 N. Alder Avenue, Rialto, California 92376. The parties and claims at  
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1 issue in Waterkeeper's pending complaint dated May 25 are related to the parties and  
2 claims at issue described herein. A notice of related cases pursuant to Civil Local Rule  
3 83-1.3.1 has been submitted concurrently herewith.

4 9. On May 25, 2016, Orange County Coastkeeper ("Coastkeeper") filed a  
5 Complaint for Declaratory and Injunctive Relief and Civil Penalties in the Central  
6 District of California Civil Case No. SA CV 16-961-DMG-JCx, *Orange County*  
7 *Coastkeeper v. Robertson's Ready Mix, Ltd.*, which alleges substantive and procedural  
8 violations of the Storm Water Permit and the Clean Water Act resulting from  
9 Defendant's operations at an industrial facility located at 310 N. Townsend Street, Santa  
10 Ana, California, 92703. The parties and claims at issue in Coastkeeper's pending  
11 complaint dated May 25 are related to the parties and claims at issue described herein. A  
12 notice of related cases pursuant to Civil Local Rule 83-1.3.1 has been submitted  
13 concurrently herewith.

14 10. On August 3, 2016, Coastkeeper filed a Complaint for Declaratory and  
15 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
16 No. \_\_\_\_\_, *Orange County Coastkeeper v. Robertson's Ready Mix, Ltd.*, which  
17 alleges substantive and procedural violations of the Storm Water Permit and the Clean  
18 Water Act resulting from Defendant's operations at an industrial facility located at 16081  
19 Construction Circle W., Irvine, California 92606. The parties and claims at issue in  
20 Coastkeeper's pending complaint dated August 3 are related to the parties and claims at  
21 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has  
22 been submitted concurrently herewith.

23 11. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and  
24 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
25 No. \_\_\_\_\_, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,  
26 which alleges substantive and procedural violations of the Storm Water Permit and the  
27 Clean Water Act resulting from Defendant's operations at an industrial facility located at  
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1 14250 Old 215 Frontage Road, Moreno Valley, California 92552. The parties and claims  
2 at issue in Waterkeeper's pending complaint dated August 3 are related to the parties and  
3 claims at issue described herein. A notice of related cases pursuant to Civil Local Rule  
4 83-1.3.1 has been submitted concurrently herewith.

5 12. On August 3, 2016, Coastkeeper filed a Complaint for Declaratory and  
6 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
7 No. \_\_\_\_\_, *Orange County Coastkeeper v. Robertson's Ready Mix, Ltd.*, which  
8 alleges substantive and procedural violations of the Storm Water Permit and the Clean  
9 Water Act resulting from Defendant's operations at an industrial facility located at 116  
10 Rincon Ct., San Clemente, California 92672. The parties and claims at issue in  
11 Coastkeeper's pending complaint dated August 3 are related to the parties and claims at  
12 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has  
13 been submitted concurrently herewith.

14 13. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and  
15 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
16 No. \_\_\_\_\_, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,  
17 which alleges substantive and procedural violations of the Storm Water Permit and the  
18 Clean Water Act resulting from Defendant's operations at an industrial facility located at  
19 452 W. 5th Luis Estrada Road, Beaumont, California 92223. The parties and claims at  
20 issue in Waterkeeper's pending complaint dated August 3 are related to the parties and  
21 claims at issue described herein. A notice of related cases pursuant to Civil Local Rule  
22 83-1.3.1 has been submitted concurrently herewith.

23 14. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and  
24 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
25 No. \_\_\_\_\_, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,  
26 which alleges substantive and procedural violations of the Storm Water Permit and the  
27 Clean Water Act resulting from Defendant's operations at an industrial facility located at  
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1 27050 Watson Road, Sun City, California 92585. The parties and claims at issue in  
2 Waterkeeper's pending complaint dated August 3 are related to the parties and claims at  
3 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has  
4 been submitted concurrently herewith.

5 **II. PARTIES**

6 **A. Inland Empire Waterkeeper and Orange County Coastkeeper.**

7 15. Inland Empire Waterkeeper is a program of Orange County Coastkeeper.  
8 Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D,  
9 Riverside, California 92506.

10 16. Orange County Coastkeeper is a non-profit public benefit corporation  
11 organized under the laws of the State of California. Orange County Coastkeeper's office  
12 is located at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626.

13 17. Together, Orange County Coastkeeper and Inland Empire Waterkeeper have  
14 over 2,000 members who live and/or recreate in and around the Santa Ana River  
15 watershed. Waterkeeper is dedicated to the preservation, protection, and defense of the  
16 environment, wildlife, and natural resources of local surface waters. To further these  
17 goals, Waterkeeper actively seeks federal and state agency implementation of the Clean  
18 Water Act and, where necessary, directly initiates enforcement actions on behalf of itself,  
19 its members, and others.

20 18. Waterkeeper's members use and enjoy the Santa Ana River and its  
21 tributaries for fishing, boating, swimming, bird watching, picnicking, viewing wildlife,  
22 sailing, kayaking, hiking, engaging in scientific study, including monitoring and research  
23 activities, and/or for aesthetic enjoyment.

24 19. Defendant's failure to comply with the procedural and substantive  
25 requirements of the Storm Water Permit and/or the Clean Water Act, including but not  
26 limited to Defendant's discharges of polluted storm water and non-storm water from the  
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1 Facility degrade water quality and harm aquatic life in the Santa Ana River, and impair  
2 Waterkeeper's members' use and enjoyment of those waters.

3 20. The violations of the Storm Water Permit and Clean Water Act at the Facility  
4 are ongoing and continuous. Thus, the interests of Waterkeeper's members have been, are  
5 being, and will continue to be adversely affected by Defendant's failure to comply with the  
6 Storm Water Permit and the Clean Water Act. The relief sought herein will redress the  
7 harms to Waterkeeper caused by Defendant's activities.

8 21. Continuing commission of the acts and omissions alleged herein will  
9 irreparably harm Waterkeeper's members, for which harm they have no plain, speedy, or  
10 adequate remedy at law.

11 **B. The Owner and/or Operator of the Robertson's Facility.**

12 22. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
13 Ready Mix, Ltd. is an owner of the Facility.

14 23. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
15 Ready Mix, Ltd. has owned the Facility since at least March 30, 1992.

16 24. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
17 Ready Mix, Ltd. is an operator of the Facility.

18 25. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
19 Ready Mix, Ltd. has operated the Facility since at least March 30, 1992.

20 26. Waterkeeper refers to Robertson's Ready Mix, Ltd. herein as the "Facility  
21 Owner and/or Operator."

22 27. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
23 Ready Mix, Ltd. is an active limited partnership registered in California.

24 28. Waterkeeper is informed and believes, and thereon alleges, that the name  
25 and address of the Registered Agent for Robertson's Ready Mix, Ltd. is Mervyn  
26 Encarnacion, 200 S. Main Street, Suite 200, Corona, California 92882.

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2 **III. LEGAL BACKGROUND**

3 **A. The Clean Water Act.**

4 29. The Clean Water Act requires point source discharges of pollutants to  
5 navigable waters be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R.  
6 § 122.26(c)(1).

7 30. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the  
8 discharge of any pollutant into waters of the United States unless the discharge complies  
9 with various enumerated Sections of the CWA. Among other things, Section 301(a)  
10 prohibits discharges not authorized by, or in violation of, the terms of a NPDES permit  
11 issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

12 31. “Waters of the United States” are defined as “navigable waters,” and “all  
13 waters which are currently used, were used in the past, or may be susceptible to use in  
14 interstate or foreign commerce, including waters which are subject to the ebb and flow of  
15 the tide.” 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

16 32. The “discharge of a pollutant” means, among other things, “any addition of  
17 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40  
18 C.F.R. § 122.2.

19 33. The EPA promulgated regulations defining “waters of the United States.”  
20 *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to include not only  
21 traditionally navigable waters, but also other waters, including waters tributary to  
22 navigable waters, wetlands adjacent to navigable waters, and intermittent streams that  
23 could affect interstate commerce.

24 34. The Clean Water Act confers jurisdiction over waters that are tributaries to  
25 traditionally navigable waters where the water at issue has a significant nexus to the  
26 navigable water. *See Rapanos v. United States*, 547 U.S. 715 (2006); *see also N. Cal.*  
27 *River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).

1           35. A significant nexus is established if the “[receiving waters], either alone or  
2 in combination with similarly situated lands in the region, significantly affect the  
3 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547 U.S.  
4 at 779; *N. Cal. River Watch*, 496 F.3d at 999-1000.

5           36. A significant nexus is also established if waters that are tributary to  
6 navigable waters have flood control properties, including functions such as the reduction  
7 of flow, pollutant trapping, and nutrient recycling. *Rapanos*, 547 U.S. at 782; *N. Cal.*  
8 *River Watch*, 496 F.3d at 1000-1001.

9           37. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for  
10 citizen enforcement actions against any “person” who is alleged to be in violation of an  
11 “effluent standard or limitation . . . or an order issued by the Administrator or a State with  
12 respect to such a standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(i) and 1365(f).

13           38. Robertson’s Ready Mix, Ltd. is a “person” within the meaning of Section  
14 502(5) of the Clean Water Act. *See* 33 U.S.C. § 1362(5).

15           39. An action for injunctive relief is authorized under Section 505(a) of the  
16 Clean Water Act. *See* 33 U.S.C. § 1365(a).

17           40. Each separate violation of the Clean Water Act subjects the violator to a  
18 penalty of up to \$37,500 per day, pursuant to Sections 309(d) and 505 of the CWA. *See*  
19 33 U.S.C. §§ 1319(d) and 1365(a); Adjustment of Civil Monetary Penalties for Inflation,  
20 40 C.F.R. § 19.4.

21           41. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits  
22 prevailing or substantially prevailing parties to recover litigation costs, including  
23 attorneys’ fees, experts’ fees, and consultants’ fees.

24           **B. California’s Storm Water Permit.**

25           42. Section 402(p) of the Clean Water Act establishes a framework for  
26 regulating industrial storm water discharges under the NPDES permit program. 33 U.S.C.  
27 § 1342(p).

1        43. Section 402(b) of the Clean Water Act allows each state to administer its  
2 own EPA-approved NPDES permit program for regulating the discharge of pollutants,  
3 including discharges of polluted storm water. *See* 33 U.S.C. § 1342(b). States with  
4 approved NPDES permit programs are authorized by section 402(b) to regulate industrial  
5 storm water discharges through individual NPDES permits issued to dischargers and/or  
6 through the issuance of a statewide general NPDES permit applicable to all industrial  
7 storm water dischargers. *See id.*

8        44. California is a state authorized by EPA to issue NPDES permits.

9        45. In California, the State Board is charged with regulating pollutants to protect  
10 California's water resources. *See* Cal. Water Code § 13001.

11        46. The Storm Water Permit is a statewide general NPDES permit issued by the  
12 State Board pursuant to the Clean Water Act.

13        47. Between 1997 and June 30, 2015, the Storm Water Permit in effect was  
14 Order No. 97-03-DWQ, which Waterkeeper refers to as the "1997 Permit."

15        48. On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water  
16 Permit was reissued, which Waterkeeper refers to as the "2015 Permit."

17        49. The 2015 Permit superseded the 1997 Permit, except for enforcement  
18 purposes, and its terms are as stringent, or more stringent, than the terms of the 1997  
19 Permit. *See* 2015 Permit, Findings, ¶ 6.

20        50. In order to discharge storm water lawfully in California, industrial  
21 dischargers must secure coverage under the Storm Water Permit and comply with its  
22 terms, or obtain and comply with an individual NPDES permit. 1997 Permit, Finding #2;  
23 2015 Permit Findings, ¶ 12. Prior to beginning industrial operations, dischargers are  
24 required to apply for coverage under the Storm Water Permit by submitting a Notice of  
25 Intent to Comply with the Terms of the General Permit to Discharge Storm Water  
26 Associated with Industrial Activity ("NOI") to the State Board. *See* 1997 Permit, Finding  
27 #3; *see also* 2015 Permit, Findings, ¶ 17.

1 51. Violations of the Storm Water Permit are violations of the Clean Water Act.  
2 *See* 1997 Permit, Section C(1) (Standard Provisions); *see also* 2015 Permit, Section  
3 XXI(A) (Duty to Comply).

4 **C. The Storm Water Permit Discharge Prohibitions, Effluent Limitations,**  
5 **and Receiving Water Limitations.**

6 52. The Storm Water Permit contains certain absolute prohibitions. The Storm  
7 Water Permit prohibits the direct or indirect discharge of materials other than storm water  
8 (“non-storm water discharges”), which are not otherwise authorized by an NPDES  
9 permit, to the waters of the United States. *See* 1997 Permit, Discharge Prohibition A(1);  
10 *see also* 2015 Permit, Discharge Prohibition III(B).

11 53. The Storm Water Permit Effluent Limitations require dischargers covered by  
12 the Storm Water Permit to reduce or prevent pollutants in storm water discharges through  
13 the implementation of Best Available Technology Economically Achievable (“BAT”) for  
14 toxic or non-conventional pollutants, and Best Conventional Pollutant Control  
15 Technology (“BCT”) for conventional pollutants. Toxic pollutants are listed at 40 C.F.R.  
16 § 401.15 and include copper, lead, and zinc, among others. Conventional pollutants are  
17 listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand (“BOD”), total  
18 suspended solids (“TSS”), oil and grease (“O&G”), and pH. *See* 1997 Permit, Effluent  
19 Limitation B(3); *see also* 2015 Permit, Section V(A).

20 54. Pursuant to the CWA and the Storm Water Permit, dischargers must employ  
21 Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce or  
22 eliminate storm water pollution. 33 U.S.C. § 1311(b); 1997 Permit, Effluent Limitation  
23 B(3); 2015 Permit, Effluent Limitation V(A).

24 55. EPA’s NPDES Storm Water Multi-Sector General Permit for Industrial  
25 Activities (“MSGP”) includes numeric benchmarks for pollutant concentrations in storm  
26 water discharges (“EPA Benchmarks”).

27 56. The EPA Benchmarks provide an objective standard to determine whether a  
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1 facility's BMPs are successfully developed and/or implemented. *See* MSGP, 80 Fed.  
2 Reg. 34,403, 34,405 (June 16, 2015); MSGP, 73 Fed. Reg. 56,572, 56,574 (Sept. 29,  
3 2008); MSGP, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000).

4 57. The EPA Benchmarks for the following parameters, among others, are as  
5 follows: pH – 6.0 – 9.0 standard units ("s.u."); TSS – 100 mg/L; total organic carbon  
6 ("TOC") – 110 mg/L; iron – 1.0 mg/L; nitrate plus nitrate as nitrogen ("N+N") – 0.68  
7 mg/L; oil and grease – 15 mg/L; aluminum – 0.75 mg/L; and zinc – 0.13 mg/L.

8 58. Discharges from an industrial facility containing pollutant concentrations  
9 that exceed EPA Benchmarks indicate that the facility has not developed and/or  
10 implemented BMPs that meet BAT for toxic pollutants and/or BCT for conventional  
11 pollutants. *Id.*

12 59. The Storm Water Permit Receiving Water Limitations prohibit storm water  
13 discharges from adversely impacting human health or the environment. *See* 1997 Permit,  
14 Receiving Water Limitation C(1); *see also* 2015 Permit, Section VI(B).

15 60. Storm water discharges with pollutant levels that exceed levels known to  
16 adversely impact aquatic species and the environment are violations of Receiving Water  
17 Limitation C(1) of the 1997 Permit and Section VI(B) of the 2015 Permit.

18 61. The Storm Water Permit Receiving Water Limitations also prohibit storm  
19 water discharges that cause or contribute to an exceedance of any "applicable Water  
20 Quality Standard in a Statewide Water Quality Control Plan or the applicable Regional  
21 Board's Basin Plan." *See* 1997 Permit, Receiving Water Limitation C(2); *see also* 2015  
22 Permit, Receiving Water Limitation VI(A).

23 62. Water Quality Standards ("WQS") are pollutant concentration levels  
24 determined by the State Board, the various regional boards, and the EPA to be protective  
25 of the beneficial uses of the waters that receive polluted discharges.

26 63. The State of California regulates water quality through the State Board and  
27 the nine Regional Boards. Each Regional Board maintains a separate Water Quality  
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1 Control Plan which contains WQS for water bodies within its geographical area.

2 64. The Water Quality Control Plan for the Santa Ana River Basin ("Basin  
3 Plan") identifies the "Beneficial Uses" of water bodies in the region. The Facility  
4 discharges into a municipal storm drain system which then discharges to the San Jacinto  
5 River, Canyon Lake, Lake Elsinore, Temescal Creek Reach 6, Reach 5, Reach 4, Reach  
6 3, Reach 2, Reach 1B, Reach 1A, Santa Ana River Reach 3, Reach 2, Reach 1, Tidal  
7 Prism of Santa Ana River, and finally into the Pacific Ocean ("Receiving Waters"). The  
8 existing and/or potential Beneficial Uses of the waters downstream of the Facility  
9 include: Water Contact Recreation; Non-contact Water Recreation; Agricultural Supply;  
10 Municipal and Domestic Supply; Groundwater Recharge; Warm Freshwater Habitat;  
11 Wildlife Habitat; Rare, Threatened or Endangered Species; and Spawning, Reproduction  
12 and Development. *See* Basin Plan at Table 3-1.

13 65. Surface waters that cannot support the Beneficial Uses of those waters listed  
14 in the Basin Plan are designated as impaired water bodies pursuant to Section 303(d) of  
15 the Clean Water Act. According to the 2012 303(d) List of Impaired Water Bodies,  
16 Canyon Lake is impaired for nutrients and pathogens; Lake Elsinore is impaired for  
17 Temescal Creek Reach 1 is impaired for pH; Temescal Creek Reach 6 is impaired for  
18 Indicator Bacteria; and the Santa Ana River Reach 3 is impaired for Copper, Lead, and  
19 pathogens; and Santa Ana River Reach 2 is impaired for Indicator Bacteria.<sup>1</sup>

20 66. Discharges of pollutants at levels above WQS contribute to the impairment  
21 of the Beneficial Uses of the waters receiving the discharges.

22 67. WQS applicable to dischargers covered by the Storm Water Permit include,  
23 but are not limited to, those set out in the Basin Plan and in the Criteria for Priority Toxic  
24 Pollutants for the State of California ("CTR"), 40 C.F.R. § 131.38.

25 68. The Basin Plan provides that "[t]he pH of inland surface waters shall not be  
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27 <sup>1</sup> 2012 Integrated Report – All Assessed Waters, *available at*  
28 [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2012.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml) (last  
accessed on May 9, 2016).

1 raised above 8.5 or depressed below 6.5 as a result of controllable water quality factors.”  
2 See Basin Plan, 4-18.

3 69. The Basin Plan provides that “[w]aste discharges shall not result in increases  
4 in COD levels in inland surface waters which exceed the values shown in Table 4-1 or  
5 which adversely affect beneficial uses.” See Basin Plan, 4-9.

6 70. The Basin Plan provides that “Inland surface waters shall not contain  
7 suspended or settleable solids in amounts which cause a nuisance or adversely affect  
8 beneficial uses as a result of controllable water quality factors.” See Basin Plan, 4-19.

9 71. The Basin Plan includes a toxicity standard which states that “[t]he  
10 concentrations of toxic pollutants in the water column, sediments or biota shall not  
11 adversely affect beneficial uses.” See Basin Plan, 4-20.

12 72. The CTR includes numeric criteria set to protect human health and the  
13 environment in the State of California. Water Quality Standards; Establishment of  
14 Numeric Criteria for Priority Toxic Pollutants for the State of California Factsheet, EPA-  
15 823-00-008 (April 2000), available at: <http://bit.ly/2aGpEGo>.

16 73. Discharges with pollutant levels in excess of the CTR criteria, the Basin Plan  
17 standards, and/or other applicable WQS are violations of Receiving Water Limitation  
18 C(2) of the 1997 Permit and Section VI(A) of the 2015 Permit.

19 **D. The Storm Water Permit Storm Water Pollution Prevention Plan**  
20 **Requirements.**

21 74. Dischargers must develop and implement a Storm Water Pollution  
22 Prevention Plan (“SWPPP”) at the time industrial activities begin. 1997 Permit, Section  
23 A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54), X(B). The SWPPP must  
24 identify and evaluate sources of pollutants associated with industrial activities that may  
25 affect the quality of storm water and authorized non-storm water discharges from the  
26 facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must  
27 identify and implement site-specific BMPs to reduce or prevent pollutants associated  
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1 with industrial activities in storm water and authorized non-storm water discharges. 1997  
2 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must include BMPs that  
3 achieve pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order  
4 Section A(2); 2015 Permit, Section I(D) (Finding 32), Section X(C).

5 75. The SWPPP must include: a narrative description and summary of all  
6 industrial activity, potential sources of pollutants, and potential pollutants; a site map  
7 indicating the storm water conveyance system, associated points of discharge, direction  
8 of flow, areas of actual and potential pollutant contact, including the extent of pollution-  
9 generating activities, nearby water bodies, and pollutants control measures; a description  
10 of storm water management practices; a description of the BMPs to be implemented to  
11 reduce or prevent pollutants in storm water discharges and authorized non-storm water  
12 discharges; the identification and elimination of non-storm water discharges; the location  
13 where significant materials are being shipped, stored, received, and handled, as well as  
14 the typical quantities of such materials and the frequency with which they are handled; a  
15 description of dust and particulate-generating activities; and a description of individuals  
16 and their current responsibilities for developing and implementing the SWPPP. 1997  
17 Permit, Section A(1)-(10); 2015 Permit, Section X.

18 76. The objectives of the SWPPP are to identify and evaluate sources of  
19 pollutants associated with industrial activities that may affect the quality of storm water  
20 discharges, to identify and implement site-specific BMPs to prevent the exposure of  
21 pollutants to storm water, and to reduce or prevent the discharge of polluted storm water  
22 from industrial facilities. 1997 Permit, Section A(2); 2015 Permit, Section X.

23 77. The Storm Water Permit requires the discharger to evaluate the SWPPP on  
24 an annual basis and revise it as necessary to ensure compliance with the Storm Water  
25 Permit. 1997 Permit, Section A(9); 2015 Permit, Section X(A)(9). The Storm Water  
26 Permit also requires that the discharger conduct an annual comprehensive site compliance  
27 evaluation that includes a review of all visual observation records, inspection reports and  
28

1 sampling and analysis results, a visual inspection of all potential pollutant sources for  
2 evidence of, or the potential for, pollutants entering the drainage system, a review and  
3 evaluation of all BMPs to determine whether the BMPs are adequate, properly  
4 implemented and maintained, or whether additional BMPs are needed, and a visual  
5 inspection of equipment needed to implement the SWPPP. 1997 Permit, Sections  
6 A(9)(a)-(c); 2015 Permit, Section XV.

7 78. Section A(9)(d) of the 1997 Permit requires that the discharger submit an  
8 evaluation report that includes an identification of personnel performing the evaluation,  
9 the date(s) of the evaluation(s), necessary SWPPP revisions, a schedule for implementing  
10 SWPPP revisions, any incidents of non-compliance and the corrective actions taken, and  
11 a certification that the discharger is in compliance with the Storm Water Permit. 1997  
12 Permit, Section A(9)(d)(i)-(vi). If certification of compliance cannot be provided, the  
13 discharger must explain in the evaluation report why the facility is not in compliance with  
14 the Storm Water Permit. *Id.*, Section A(9)(d). The evaluation report shall be submitted as  
15 part of the Annual Report specified in Section B(14) of the Storm Water Permit. *Id.*

16 79. The SWPPP and site maps must be assessed annually and revised as  
17 necessary to ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4);  
18 2015 Permit, Sections I(J) (Finding 55), X(B)(1).

19 **E. The Storm Water Permit Monitoring and Reporting Requirements.**

20 80. The 1997 Permit required facility operators to develop and implement a  
21 monitoring and reporting program ("M&RP") when industrial activities begin at a  
22 facility. 1997 Permit, Sections B(1)-(2) and E(3). The 2015 Permit requires  
23 implementation of an M&RP. 2015 Permit, Sections X(I) and XI. The M&RP must  
24 ensure that storm water discharges are in compliance with the Discharge Prohibitions,  
25 Effluent Limitations, and Receiving Water Limitations specified in the 1997 Permit. *See*  
26 1997 Permit, Section B(2); *see also* 2015 Permit, Section X(I). The M&RP must ensure  
27 that practices at the facility prevent or reduce pollutants in storm water and authorized  
28

1 non-storm water discharges are evaluated and revised to meet changing conditions at the  
2 facility, including revision of the SWPPP. *Id.*

3 81. The objectives of the M&RP are to ensure that BMPs have been adequately  
4 developed and implemented, revised if necessary, and to ensure that storm water and  
5 non-storm water discharges are in compliance with the Storm Water Permit's Discharge  
6 Prohibitions, Effluent Limitations, and Receiving Water Limitations. 1997 Permit,  
7 Sections B(2)(a) and B(2)(b); 2015 Permit, Sections X(I) and XI.

8 82. The 2015 Permit requires facility operators to monitor and sample storm  
9 water discharges to ensure that the facility is complying with the terms of the Storm  
10 Water Permit. 2015 Permit, Sections I(J) (Findings 55-56) and XI.

11 83. Section B(2)(d) of the 1997 Permit and Section XI(A)(4) of the 2015 Permit  
12 require that the M&RP shall be revised as necessary to ensure compliance with the Storm  
13 Water Permit.

14 84. Section B(4)(a) of the 1997 Permit and Section XI(A) of the 2015 Permit  
15 require dischargers to conduct monthly visual observations of storm water discharges.

16 85. Section B(4)(c) of the 1997 Permit and Section XI(A)(2) of the 2015 Permit  
17 require dischargers to document the presence of any floating and suspended materials, oil  
18 and grease, discolorations, turbidity, or odor in the discharge, and the source of any  
19 pollutants in storm water discharges from the facility. Dischargers are required to  
20 maintain records of observations, observation dates, discharge locations observed, and  
21 responses taken to reduce or prevent pollutants from contacting storm water discharges.  
22 *See* 1997 Permit, Section B(4)(c); 2015 Permit, Section XI(A)(3).

23 86. The Storm Water Permit also requires dischargers to revise the SWPPP as  
24 necessary to ensure that BMPs are effectively reducing and/or eliminating pollutants at  
25 the facility. 1997 Permit, Section B(4)(c); 2015 Permit, Section X(B)(1).

26 87. The Storm Water Permit requires dischargers to visually observe and collect  
27 samples of storm water discharges from all locations where storm water is discharged.  
28

1 1997 Permit, Sections B(5) and B(7); 2015 Permit Section XI(B)(4).

2 88. Section B(5)(a) of the 1997 Permit required dischargers to collect storm  
3 water samples during the first hour of discharge from the first storm event of the Wet  
4 Season and at least one (1) other storm event in the Wet Season. All storm water  
5 discharge locations must be sampled. Facility operators that do not collect samples from  
6 the first storm event of the Wet Season are still required to collect samples from two (2)  
7 other storm events of the Wet Season and must explain in the Annual Report why the first  
8 storm event was not sampled.

9 89. Section B(15) of the 1997 Permit required dischargers participating in a  
10 group monitoring plan to collect at least two (2) samples from each discharge point at the  
11 Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15).

12 90. Section XI(B)(3) of the 2015 Permit requires dischargers participating in a  
13 compliance group to collect and analyze storm water samples from one (1) QSE within  
14 the first half of each reporting year (July 1 to December 31) and one (1) QSE within the  
15 second half of each reporting year (January 1 to June 30).

16 91. The Facility was and/or is a member of the Building Materials Industry  
17 Group Monitoring Program, and thus the Facility Owner and/or Operator must comply  
18 with the group monitoring provisions set forth in Section B(15) of the 1997 Permit and  
19 Section XI(B)(3) of the 2015 Permit.

20 92. Section B(5)(b) required that sampling conducted pursuant to the  
21 1997 Permit occur during scheduled facility operating hours that are preceded by at least  
22 three (3) working days without storm water discharge.

23 93. Section XI(B)(1) of the 2015 Permit requires sampling if a precipitation  
24 event produces a discharge for at least one (1) drainage area, and it is preceded by forty-  
25 eight (48) hours with no discharge from any drainage area ("QSE").

26 94. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and  
27 analyze storm water samples from two (2) QSEs within the first half of each reporting  
28

1 year (July 1 to December 31), and two (2) QSEs within the second half of each reporting  
2 year (January 1 to June 30).

3 95. Section XI(B)(11) of the 2015 Permit, among other requirements, provides  
4 that permittees must submit all sampling and analytical results for all samples via  
5 SMARTS within thirty (30) days of obtaining all results for each sampling event.

6 96. Section B(5)(c)(i) of the 1997 Permit required dischargers to analyze each  
7 sample for pH, specific conductance ("SC"), TSS, and total organic carbon ("TOC"). A  
8 discharger may substitute analysis for O&G instead of TOC.

9 97. Section B(5)(c)(ii) of the 1997 Permit required dischargers to analyze each  
10 sample for toxic chemicals and other pollutants likely to be present in significant  
11 quantities in the storm water discharged from the facility.

12 98. Section B(5)(c)(iii) and Table D of the 1997 Permit and Table 1 of the 2015  
13 Permit require facilities classified as Standard Industrial Classification ("SIC") code 3273  
14 (Ready-Mix Concrete), such as the Facility, to also analyze storm water samples for iron,  
15 as well as other parameters required by the Regional Board.

16 99. Section XI(B)(6)(a)-(b) of the 2015 Permit requires dischargers to analyze  
17 samples for TSS, O&G, and pH.

18 100. Section XI(B)(6)(c) of the 2015 Permit requires dischargers to analyze  
19 samples for pollutants associated with industrial operations.

20 101. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze  
21 storm water samples for additional applicable industrial parameters related to receiving  
22 waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

23 102. Section B(14) of the 1997 Permit required that dischargers submit an Annual  
24 Report to the applicable Regional Board by July 1 of each year. The Annual Report must  
25 include a summary of visual observations and sampling results, an evaluation of the  
26 visual observations and sampling and analysis results, laboratory reports, the annual  
27 comprehensive site compliance evaluation report specified in Section A(9), an  
28

1 explanation of why a facility did not implement any activities required, and the records  
2 specified in Section B(13)(i).

3 103. Section XVI of the 2015 Permit requires dischargers to submit an annual  
4 report with a Compliance Checklist that indicates whether a discharger complies with,  
5 and has addressed all applicable requirements of the 2015 Permit, an explanation for any  
6 non-compliance of requirements within the reporting year, as indicated in the Compliance  
7 Checklist, an identification, including page numbers and/or Sections, of all revisions  
8 made to the SWPPP within the reporting year, and the date(s) of the Annual Evaluation.

9 **IV. FACTUAL BACKGROUND**

10 **A. Facility Site Description.**

11 104. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
12 is an active concrete batch plant.

13 105. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 is 4.1 acres.

15 106. Waterkeeper is informed and believes, and thereon alleges, that raw  
16 materials, including aggregate (rock, sand, and gravel), cement, fly ash, and admixtures  
17 are delivered to and stored at the Facility.

18 107. Waterkeeper is informed and believes, and thereon alleges, that raw  
19 materials, including aggregate (rock, sand, and gravel), cement, fly ash, and admixtures  
20 are mixed with water to create concrete at the Facility.

21 108. Waterkeeper is informed and believes, and thereon alleges, that raw  
22 materials, including aggregate (rock, sand, and gravel), cement, fly ash, water, and (if  
23 applicable) admixtures are added to concrete haul trucks at the Facility that mix the  
24 ingredients together to produce concrete that haul the concrete off site.

25 109. Waterkeeper is informed and believes, and thereon alleges, that the concrete  
26 production process at the Facility also includes onsite vehicle and mobile equipment  
27 operating, parking, fueling, and maintenance.

1 110. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 includes a batch plant.

3 111. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
4 includes a fuel storage area.

5 112. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 handles hazardous material throughout the site because vehicles and mobile equipment  
7 can be located throughout the site and that significant quantities of hazardous materials  
8 are stored and used in the Fuel Storage Area and the Admixture Storage Area.

9 113. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 includes outdoor storage areas.

11 114. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
12 includes cement silos.

13 115. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 includes fly ash silos.

15 116. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 includes admixture storage areas.

17 117. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 includes a truck washing area.

19 118. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
20 includes material unloading and loading areas.

21 119. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 includes a permitted underground storage tank.

23 **B. The Facility's Storm Water Permit Coverage.**

24 120. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
25 Owner and/or Operator obtained Storm Water Permit coverage on March 30, 1992, by  
26 submitting a Notice of Intent to the State Board ("1992 NOI").

27 121. Waterkeeper is informed and believes, and thereon alleges, that in the  
28

1 1992 NOI the Facility Owner and/or Operator identified the owner/operator of the  
2 Facility as "Robertson's Ready Mix" and the Facility name and location as "San Jacinto  
3 Batch Plant, 1675 S. State St., San Jacinto, California 92383."

4 122. The 1992 NOI lists the Facility as 4 acres in size.

5 123. The 1992 NOI lists the Facility as 57% impervious.

6 124. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
7 Owner and/or Operator obtained Storm Water Permit coverage on June 6, 1997, by  
8 submitting a Notice of Intent to the State Board ("1997 NOI").

9 125. Waterkeeper is informed and believes, and thereon alleges, that in the  
10 1997 NOI the Facility Owner and/or Operator identified the owner/operator of the  
11 Facility as "Robertsons Ready Mix" and the Facility name and location as "Robertsons  
12 San Jacinto Plant, 1675 S. State St., San Jacinto, California 92383."

13 126. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator submitted an NOI on September 29, 2015, to continue its Storm  
15 Water Permit coverage for the Facility under the 2015 Permit.

16 127. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
17 Owner and/or Operator identified the owner/operator of the Facility as "Robertsons  
18 Ready Mix" and the Facility name and location as "Robertsons Ready Mix Perris, 1675  
19 S. State St., San Jacinto, California 92383."

20 128. The 2015 NOI lists the Facility as 4 acres.

21 129. The 2015 NOI lists the industrial area exposed to storm water as 19600 Sq.  
22 Feet.

23 130. The 2015 NOI does not list the percentage of imperviousness.

24 131. The State Board's electronic database, called the Storm Water Multiple  
25 Application & Report Tracking System ("SMARTS"), lists the current Facility Waste  
26 Discharge Identification ("WDID") number as 8 33I005071.

27 132. SMARTS lists the Facility's coverage under the Storm Water Permit as  
28

1 “Active.”

2 133. The 1992 NOI and the 2015 NOI list a SIC code for the Facility as 3273  
3 (Ready-Mixed Concrete).

4 134. Section 6.1 of the Facility SWPPP identifies mobile equipment operation,  
5 fueling, and maintenance, and vehicle and equipment parking, as industrial processes that  
6 are conducted at the Facility.

7 135. Waterkeeper is informed and believes, and thereon alleges, that SIC code  
8 4214 (local trucking with storage) applies to the Facility.

9 136. A facility classified as SIC code 3273 requires Storm Water Permit coverage  
10 for the entire facility. 1997 Permit, Attachment 1, Section 4; *see also* 2015 Permit,  
11 Attachment A, ¶ 2.

12 137. Waterkeeper is informed and believes, and thereon alleges, that the entire  
13 Facility requires Storm Water Permit coverage because the industrial activities at the  
14 Facility are classified as SIC code 3273.

15 138. The 2014/2015 Building Material Industry Group Monitoring Plan lists the  
16 Facility as 4.1 acres.

17 139. The 2014/2015 Building Material Industry Group Monitoring Plan lists the  
18 Facility as 57% impervious.

19 140. The Facility SWPPP states the Facility is approximately 4.1 acres

20 141. The Facility SWPPP states that Facility is 35% pervious. *See* SWPPP, at 5.

21 142. The Facility SWPPP states the Drainage Area 1 (DA1) includes the entire  
22 site. *See* SWPPP, at 5.

23 143. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
24 consists of more than 4.0 acres and that the Facility Owner and/or Operator has failed to  
25 obtain Storm Water Permit coverage for the entire Facility.

26 144. Waterkeeper is informed and believes, and thereon alleges, that the  
27 2015 NOI erroneously failed to list the percentage of imperviousness at the Facility.  
28

1        145. Waterkeeper is informed and believes, and thereon alleges, that to the extent  
2 the Facility Owners and/or Operators have or intend to limit the Storm Water Permit  
3 coverage at the Facility based on the asserted acreage “exposed to storm water,”  
4 Waterkeeper puts the Facility Owners and/or Operators on notice that they have not  
5 complied, and cannot comply, with Section XVII.E.1. of the Storm Water Permit and the  
6 required “no exposure” certification. Further, to the extent the Facility Owners and/or  
7 Operators failed to obtain Permit coverage for all areas of industrial activity at the  
8 Facility, storm water discharges associated with industrial activities from unpermitted  
9 portions of the Facility violate section 301(a) of the Clean Water Act.

10        **C. Defendant’s SWPPP and M&RP for the Facility.**

11        146. The Facility SWPPP and M&RP publicly available via the SMARTS  
12 database is dated October 2, 2015.

13        147. Waterkeeper is informed and believes, and thereon alleges, that the SWPPP  
14 and M&RP dated October 2, 2015, is the current SWPPP and M&RP for the Facility  
15 (“Facility SWPPP”).

16        **D. Industrial Activities, Pollutant Sources, Pollutants, and BMPs at the**  
17 **Facility.**

18        148. Waterkeeper is informed and believes, and thereon alleges, that the  
19 Facility’s industrial activities and areas of industrial activity are pollutant sources.

20        149. Waterkeeper is informed and believes, and thereon alleges, that the  
21 Facility’s industrial activities and areas include, but are not limited to: receiving raw  
22 materials (aggregate, cement, fly ash, admixtures) from off site; concrete production in  
23 the batch plant, loading finished product into ready mix trucks for delivery to customers;  
24 concrete mixing; transport of raw materials; unloading of raw materials; outdoor storage  
25 of raw materials, including sand, gravel, rock, chemical admixtures, fly ash, cement, and  
26 recycled concrete; fueling, repairing, cleaning, and maintaining vehicles and equipment;  
27 storage of fuels and hazardous materials, such as diesel fuel, lubricating fluids, new  
28

1 vehicle fluids, and hazardous waste vehicle fluids; washing concrete mixer trucks; and  
2 vehicle and equipment parking, fueling, and maintenance.

3 150. Section 4 of the Facility SWPPP references Appendix A, Figure 1 (site  
4 location map), and Figure 2 (site plan). However, the Facility SWPPP does not include  
5 Appendix A, Figure 1, and Figure 2.

6 151. Section 5 and Table 1 of the Facility SWPPP provide brief descriptions of  
7 the areas where industrial activities are conducted at the Facility.

8 152. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
9 SWPPP does not include all areas of industrial activity at the Facility.

10 153. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 SWPPP does not adequately describe all industrial processes at the Facility.

12 154. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
13 SWPPP does not adequately describe all dust and particulate generating activities.

14 155. Waterkeeper is informed and believes, and thereon alleges, that a site map  
15 dated February 19, 2015 ("February 19 map"), was uploaded to SMARTS on March 24,  
16 2015, and that the February 19 map is a map of the Facility submitted pursuant to  
17 Section II(B)(3)(a) of the 2015 Permit.

18 156. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 SWPPP does not include a separate copy of the February 19 map or any other site map of  
20 the Facility.

21 157. Waterkeeper is informed and believes, and thereon alleges, that the February  
22 19 map does not identify all areas of industrial activity at the Facility.

23 158. The 2014/2015 Building Material Industry Group Monitoring Plan lists the  
24 Facility as having one (1) discharge location.

25 159. The February 19 Map indicates the Facility is made up of three (3) drainage  
26 areas, Drainage Area 1 (DA1), Drainage Area 2 (DA2), and Drainage Area 3 (DA3).

27 160. The February 19 Map indicates the Facility includes two (2) discharge  
28

1 locations, "Outfall #1" and "Outfall #2".

2 161. Information available to Waterkeeper indicates that storm water discharges  
3 from the Facility's northern and southern driveways onto State Street.

4 162. The 2010/2011, 2012/2013 and 2013/2014 Annual Reports include a  
5 "Drainage Location Description" of (1) "North Gate" and (2) "South Gate."

6 163. The 2011/2012 Annual Report, uploaded to SMARTS Database on August  
7 16, 2012 is for the "Robertson's Redlands Plant" Facility. It describes a "Drainage  
8 Location Description" as "West Exit" and "North Exit."

9 164. Waterkeeper is informed and believes, and thereon alleges, that the February  
10 19 map does not include locations and descriptions of structural control measures that  
11 affect industrial storm water discharges.

12 165. Waterkeeper is informed and believes, and thereon alleges, that the February  
13 19 map does not identify locations where materials are directly exposed to precipitation.

14 166. Section 6.7 of the Facility SWPPP states that the "Facility is located in a  
15 relatively level area. There is limited potential for run on from neighboring operations."

16 167. Waterkeeper is informed and believes, and thereon alleges, that the February  
17 19 map does not include notes, legends, and other data appropriate to ensure the site map  
18 is clear, legible, and understandable.

19 168. Waterkeeper is informed and believes, and thereon alleges, that industrial  
20 activities occur throughout the Facility outdoors without adequate cover to prevent storm  
21 water exposure to pollutant sources.

22 169. Waterkeeper is informed and believes, and thereon alleges, that industrial  
23 activities occur throughout the Facility outdoors without secondary containment or other  
24 adequate treatment measures to prevent polluted storm water from discharging from the  
25 Facility.

26 170. Waterkeeper is informed and believes, and thereon alleges, that because the  
27 Facility SWPPP fails to describe all of the Facility's industrial activities, the Facility  
28

1 SWPPP also fails to describe all of the significant materials and processes that are related  
2 to the Facility's industrial activities.

3 171. Waterkeeper is informed and believes, and thereon alleges, that because all  
4 significant materials have not been identified, the Facility SWPPP fails to describe the  
5 locations where the materials are stored, received, shipped, and handled, or the typical  
6 quantities and frequency of significant materials at the Facility.

7 172. Section 5.0, Table 1, and Section 6.8 of the SWPPP identify potential  
8 pollutants associated with the Facility's industrial activities.

9 173. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 SWPPP fails to describe all of the pollutants associated with the Facility's industrial  
11 activities.

12 174. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
13 Owner and/or Operator has failed and continues to fail to adequately assess pollutants  
14 associated with potential pollutant sources at the Facility.

15 175. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 SWPPP does not include an adequate assessment of pollutants associated with potential  
17 pollutant sources at the Facility.

18 176. Waterkeeper is informed and believes, and thereon alleges, that pollutants  
19 associated with the Facility include, but are not limited to: pH-affecting substances;  
20 metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium,  
21 copper, and arsenic; COD; BOD; TSS; benzene; gasoline and diesel fuels; fuel additives;  
22 coolants; trash; and O&G.

23 177. Section 6.8 and Table 3 of the Facility SWPPP identify the BMPs for the  
24 areas of industrial activity at the Facility.

25 178. Section 8.0, Table 5, and Table 6 of the Facility SWPPP lists the BMPs at  
26 the Facility.

27 179. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
28

1 SWPPP fails to describe adequate BMPs to reduce or prevent pollutants in the Facility's  
2 discharges.

3 180. Waterkeeper is informed and believes, and thereon alleges, that without  
4 properly identifying all industrial activities at the Facility in the SWPPP, the Facility  
5 Owner and/or Operator cannot and has not developed all appropriate BMPs.

6 181. Waterkeeper is informed and believes, and thereon alleges, that without  
7 properly identifying all industrial activities at the Facility in the SWPPP, the Facility  
8 Owner and/or Operator cannot and has not implemented all appropriate BMPs.

9 182. Waterkeeper is informed and believes, and thereon alleges, that without  
10 properly identifying all significant materials at the Facility in the SWPPP, the Facility  
11 Owner and/or Operator cannot and has not developed all appropriate BMPs.

12 183. Waterkeeper is informed and believes, and thereon alleges, that without  
13 properly identifying all significant materials at the Facility in the SWPPP, the Facility  
14 Owner and/or Operator cannot and has not implemented all appropriate BMPs.

15 184. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 SWPPP does not include an adequate assessment of potential pollutant sources at the  
17 Facility.

18 185. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 Owner and/or Operator has failed and continues to fail to assess the Facility's BMPs  
20 corresponding to potential pollutant sources and associated pollutants.

21 186. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 SWPPP does not include an adequate assessment of the Facility's BMPs corresponding to  
23 potential pollutant sources and associated pollutants.

24 187. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
25 Owner and/or Operator has failed and continues to fail to assess potential pollutant  
26 sources at the Facility.

27 188. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
28

1 SWPPP does not include an adequate description of the Facility BMPs.

2 189. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 Owner and/or Operator has failed and continues to fail to analyze the effectiveness of the  
4 BMPs at the Facility.

5 190. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 SWPPP does not include an adequate analysis of the effectiveness of the BMPs at the  
7 Facility.

8 191. Waterkeeper is informed and believes, and thereon alleges, that while the  
9 Facility Owners and/or Operators have not collected any storm water samples, storm  
10 water associated with industrial activities regulated by the permit does discharge from the  
11 Facility, and given the inadequate BMPs at the Facility, those discharges violate the  
12 permit effluent limitations.

13 192. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator has failed and continues to fail to develop BMPs to prevent the  
15 exposure of pollutants to storm water, and to prevent discharges of polluted storm water  
16 from the Facility.

17 193. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 Owner and/or Operator has failed and continues to fail to implement BMPs to prevent the  
19 exposure of pollutants to storm water, and to prevent discharges of polluted storm water  
20 from the Facility.

21 194. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 Owner and/or Operator has failed and continues to fail to adequately revise the SWPPP.

23 195. Waterkeeper is informed and believes, and thereon alleges, that the normal  
24 operating hours of the Facility are Monday through Saturday, 5:00 am to 6:00 pm.

25 **E. Discharge Locations at the Facility.**

26 196. In the Facility SWPPP, the Facility Owner and/or Operator identifies two (2)  
27 discharge points located at the Facility labeled as Outfall 1 and Outfall 2. *See* SWPPP,  
28

1 at 5.

2 197. Section 4.1 of the Facility SWPPP indicates that Drainage Area 1 includes  
3 the entire site.

4 198. Section 4.1 of the Facility SWPPP states that storm water that “[s]torm water  
5 flows to the sump basin at the center of the plant, where it is contained and pumped back  
6 to the plant for re-use.”

7 199. Section 4.1 of the Facility SWPPP also states that “[t]he storm water from  
8 [DA2] and [DA3] is potentially impacted by industrial activities. Therefore, Outfalls 1  
9 and 2 will be sampled.”

10 200. Section 1.0 of the Facility SWPPP also states that, “[o]verflow from the  
11 wash out basins flow to a sump. The sump near the center of the plant area will collect  
12 runoff from the operations which is pumped back to the plant and reused. Pollutants that  
13 settle into the bottom of the sump will be collected, dried and used in the concrete  
14 recycling process. The facility has been graded to drain to the [j]ump located at the bath  
15 plant. There are grade-breaks located at the facility exit and entrance driveways. A small  
16 portion of the driveway drains to the State Street [DA2], [DA3] storm runoff system.”

17 201. Waterkeeper is informed and believes, and thereon alleges, that storm water  
18 is also collected in a sump at the Facility such that non-storm water and storm water is  
19 commingled.

20 202. The Facility site map available on the SMARTS database shows Outfall 1 as  
21 located at the Facility’s exit, at the northern driveway onto State Street.

22 203. The Facility site map available on the SMARTS database shows Outfall 2 as  
23 located at the Facility’s entrance, at the southern driveway onto State Street.

24 204. Waterkeeper is informed and believes, and thereon alleges, that Outfall 1 is a  
25 storm water discharge point at the Facility.

26 205. Waterkeeper is informed and believes, and thereon alleges, that Outfall 2 is a  
27 storm water discharge point at the Facility.

1        206. The 2014/2015 Building Materials Industry Group Monitoring Plan for the  
2 Facility reports that there is one (1) storm water discharge location at the Facility.

3        207. Waterkeeper is informed and believes, and thereon alleges, that there are at  
4 least two (2) discharge locations at the Facility.

5        208. Waterkeeper is informed and believes, and thereon alleges, that the  
6 pollutants associated with the Facility have been and continue to be tracked throughout  
7 the Facility.

8        209. Waterkeeper is informed and believes, and thereon alleges, that trucks and  
9 vehicles track sediment, dirt, oil and grease, metal particles, and other pollutants off-site  
10 via the driveway from the Facility.

11        210. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
12 SWPPP provides no sizing information for the sump basin(s) at the Facility  
13 demonstrating the retention capacity of the sump basin(s).

14        211. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 Owner and/or Operator have never collected a storm water sample at the Facility.

16        **F. The Facility's Discharges to the Receiving Waters.**

17        212. Table 7 of the Facility SWPPP indicates that the Facility discharges into a  
18 storm drain system on State Street, "which directs runoff to Warm Springs Creek and  
19 downstream bodies" and to Murrieta Creek, and Santa Margarita River (Upper).

20        213. Table 8 of the Facility SWPPP also indicates that Warm Springs Creek is  
21 listed on the SWRCB's 303(d) list of impaired water bodies for the following pollutants:  
22 chlorpyrifos, escherichia coli, fecal coliform, iron, manganese, phosphorous, and total  
23 nitrogen as N. The SWPPP states that chlorpyrifos, escherichia coli, fecal coliform,  
24 manganese, phosphorous, and nitrogen are not byproducts generated by the Facility, and  
25 the storm water samples will not be analyzed for them.

26        214. Table 8 of the Facility SWPPP also indicates that the Facility discharges into  
27 Murrieta Creek, which is listed on the SWRCB's 303(d) list of impaired water bodies for  
28

1 chlorpyrifos, copper, manganese, phosphorous, nitrogen, and toxicity. It also states that  
2 chlorpyrifos, copper, manganese, phosphorous, nitrogen, and toxicity are not generated  
3 by the Facility and storm water samples will not be analyzed for those parameters.

4 215. Table 8 of the Facility SWPPP also indicates that the Facility discharges into  
5 Murrieta Creek, which is listed on the SWRCB's 303(d) list of impaired water bodies for  
6 phosphorous and toxicity.

7 216. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 SWPPP list of receiving waters is incorrect and identifies incorrect impairment listings.

9 217. Waterkeeper is informed and believes, and thereon alleges, that the  
10 discharge point at the Facility lead to the municipal storm drain system which then  
11 discharges to the San Jacinto River.

12 218. Waterkeeper is informed and believes, and thereon alleges, that the polluted  
13 storm water then discharges from the San Jacinto River to Canyon Lake, Lake Elsinore,  
14 Temescal Creek Reach 6, Reach 5, Reach 4, Reach 3, Reach 2, Reach 1B, Reach 1A,  
15 Santa Ana River Reach 3, Reach 2, Reach 1, Tidal Prism of Santa Ana River, and finally  
16 into the Pacific Ocean.

17 219. Waterkeeper is informed and believes, and thereon alleges, that each of the  
18 Receiving Waters is a water of the United States.

19 220. Waterkeeper is informed and believes, and thereon alleges, that polluted  
20 storm water and non-storm water discharges from the Facility to the Receiving Waters.

21 **G. Defendant's Sampling, Monitoring, and Reporting.**

22 221. Via a Public Records Act request to the Regional Board, Waterkeeper  
23 obtained an Annual Report for the Facility dated June 1, 2011.

24 222. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
25 Report dated June 1, 2011, obtained from the Regional Board is the 2010/2011 Annual  
26 Report for the Facility.

27 223. Via the SMARTS database, Waterkeeper obtained an Annual Report for the  
28

1 Facility dated May 28, 2012.

2 224. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
3 Report dated May 28, 2012 is not the 2011/2012 Annual Report for the Facility because it  
4 states it is the Annual Report for the Facility named and addressed as "Robertson's  
5 Redlands Plant, 8353 Alabama, Redlands, CA."

6 225. Via the SMARTS database, Waterkeeper obtained an Annual Report for the  
7 Facility dated May 27, 2013.

8 226. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
9 Report dated May 27, 2013, obtained from the Regional Board is the 2012/2013 Annual  
10 Report for the Facility.

11 227. Via the SMARTS database, Waterkeeper obtained an Annual Report for the  
12 Facility dated May 29, 2014.

13 228. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
14 Report dated May 29, 2014, obtained from the Regional Board is the 2013/2014 Annual  
15 Report for the Facility.

16 229. Waterkeeper refers to the above-described 2010/2011 Annual Report,  
17 2012/2013 Annual Report, and 2013/2014 Annual Report, collectively as Defendant's  
18 "Annual Reports."

19 230. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
20 Owner and/or Operator failed to develop an adequate M&RP.

21 231. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 Owner and/or Operator failed to report any storm water sampling during the reporting  
23 years covered by these Annual Reports.

24 232. The Facility SWPPP indicates that the Facility discharges into a storm drain  
25 system on State Street, "which directs runoff to Warm Springs Creek and downstream  
26 bodies" and to Murrieta Creek, and Santa Margarita River (Upper). *See* SWPPP, at 33.

27 233. The Facility SWPPP states that the Warm Springs Creek is listed on the  
28

1 SWRCB's 303(d) list of impaired water bodies for the following pollutants: chlorpyrifos,  
2 escherichia coli, fecal coliform, iron, manganese, phosphorous, and total nitrogen as N.  
3 *See* SWPPP, at 34.

4 234. The Facility SWPPP states that chlorpyrifos, escherichia coli, fecal coliform,  
5 manganese, phosphorous, and nitrogen are not byproducts generated by the Facility, and  
6 the storm water samples will not be analyzed for them. *See* SWPPP, at 34.

7 235. Table 8 of the Facility SWPPP also indicates that the Facility discharges into  
8 Murrieta Creek, which is listed on the SWRCB's 303(d) list of impaired water bodies for  
9 chlorpyrifos, copper, iron, manganese, phosphorous, nitrogen, and toxicity. *See* SWPPP,  
10 at 35.

11 236. The Facility SWPPP states that chlorpyrifos, copper, manganese,  
12 phosphorous, nitrogen, and toxicity are not generated by the Facility and storm water  
13 samples will not be analyzed for those parameters. *See* SWPPP, at 35.

14 237. Waterkeeper is informed and believes, and thereon alleges, that the storm  
15 water that is discharged from the site flows into the San Jacinto River, which is a main  
16 tributary of Canyon Lake, which ultimately flows into Lake Elsinore.

17 238. Waterkeeper is informed and believes, and thereon alleges, that states that  
18 Lake Elsinore discharges into Reach 6 of Temescal Creek.

19 239. Waterkeeper is informed and believes, and thereon alleges, that the 2012  
20 303(d) List identifies Canyon Lake as impaired for pollutants including pathogens and  
21 nutrients.

22 240. Waterkeeper is informed and believes, and thereon alleges, that the 2012  
23 303(d) List identifies Lake Elsinore as impaired for pollutants including nutrients,  
24 organic enrichment/low dissolved oxygen, PCBs, sediment toxicity, and unknown  
25 toxicity.

26 241. Waterkeeper is informed and believes, and thereon alleges, that the 2012  
27 303(d) List identifies Reach 6 of Temescal Creek as impaired for indicator bacteria.  
28

1 242. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 SWPPP fails to include all the Facility's receiving waters.

3 243. Waterkeeper is informed and believes, and thereon alleges, that the 2012  
4 303(d) List identifies Temescal Creek Reach 1 as impaired for pH; Santa Ana River  
5 Reach 3 as impaired for copper, lead, and pathogens; and Santa Ana River Reach 2 as  
6 impaired for indicator bacteria.

7 244. The EPA's *Industrial Stormwater Fact Sheet Series, Sector E* states  
8 "Concrete Product Manufacturing" facilities and "All Facilities" in Sector E include  
9 associated pollutants of lead, iron, zinc, and aluminum.

10 245. Waterkeeper is informed and believes, and thereon alleges, that contributing  
11 pollutants to these impaired waters include copper and lead.

12 246. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
13 has failed to identify industrial pollutants related to the Receiving Waters with Section  
14 303(d) listed impairments that may be causing or contributing to an exceedance of a  
15 WQS, as required by Section X(G)(2)(a)(ix) of the 2015 Permit.

16 247. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
17 has failed to analyze storm water samples for pollutants related to the Receiving Waters  
18 with 303(d) listed impairments that may be causing or contributing to an exceedance of a  
19 WQS, as required by Section XI(B)(6)(e) of the 2015 Permit.

20 2010/2011 Annual Report

21 248. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 Owner and/or Operator failed to identify the correct number of discharge locations at the  
23 Facility in the 2010/2011 Annual Report.

24 249. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
25 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
26 observations of unauthorized non-storm water discharges for each of its drainage areas in  
27 the 2010/2011 Annual Report.

1        250. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 Owner and/or Operator failed to indicate the location of non-storm water visual  
3 observations to document which discharge areas were observed in the 2010/2011 Annual  
4 Report.

5        251. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 Owner and/or Operator failed to include the required summary of its monthly visual  
7 observations of storm water discharges for each of its discharge points in the 2010/2011  
8 Annual Report.

9        252. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner and/or Operator failed to include the required evaluation of its monthly visual  
11 observations of storm water discharges for each of its discharge points in the 2010/2011  
12 Annual Report.

13        253. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator failed to include the required summary of the presence of any  
15 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
16 pollutants at the unobserved discharge points in the 2010/2011 Annual Report.

17        254. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 Owner and/or Operator failed to include the required evaluation of the presence of any  
19 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
20 pollutants at the unobserved discharge points in the 2010/2011 Annual Report.

21        255. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 Owner and/or Operator failed to include the required summary of its quarterly visual  
23 observations of unauthorized non-storm water discharges for each of its drainage areas in  
24 the 2010/2011 Annual Report.

25        256. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
27 observations of unauthorized non-storm water discharges for each of its drainage areas in  
28

1 the 2010/2011 Annual Report.

2 257. In the 2010/2011 Annual Report, the Facility Owner and/or Operator reports  
3 that it was exempt from collecting and analyzing samples from two (2) storm events  
4 because the Facility was participating in an approved group monitoring plan, i.e., the  
5 Building Materials Industry Group Monitoring Plan.

6 258. In the 2010/2011 Annual Report, the Facility Owner and/or Operator reports  
7 that it was scheduled to sample one (1) storm event during the 2010/2011 reporting year.

8 259. In the 2010/2011 Annual Report, the Facility Owner and/or Operator reports  
9 that it sampled zero (0) storm events in the 2010/2011 reporting year because there was  
10 “[n]o qualifying storm event during operational hours.”

11 260. Waterkeeper is informed and believes, and thereon alleges, that during the  
12 2010/2011 Wet Season, the Facility Owner and/or Operator failed to collect any storm  
13 water samples.

14 261. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 Owner and/or Operator certified that the Facility was in compliance with the Storm  
16 Water Permit in its 2010/2011 Annual Report.

17 262. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 Owner’s and/or Operator’s certification of compliance in the 2010/2011 Annual Report  
19 was false because it failed to comply with Section B(14) of the 1997 Permit.

20 263. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
21 Owner’s and/or Operator’s certification of compliance in the 2010/2011 Annual Report  
22 was false because the Facility Owner and/or Operator had not revised the Facility  
23 SWPPP to achieve compliance with the Storm Water Permit.

24 264. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
25 Owner’s and/or Operator’s certification of compliance in the 2010/2011 Annual Report  
26 was false because the Facility Owner and/or Operator had not revised the Facility M&RP  
27 to achieve compliance with the Storm Water Permit.

1        265. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 Owner and/or Operator failed to describe instances of the Facility's noncompliance with  
3 the Storm Water Permit in its 2010/2011 Annual Report.

4        266. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence  
6 of its noncompliance with the Storm Water Permit in its 2010/2011 Annual Report.

7        2011/2012 Annual Report

8        267. The 2011/2012 Annual Report, uploaded to SMARTS Database on August  
9 16, 2012 is for the "Robertson's Redlands Plant" Facility.

10       268. Waterkeeper is informed and believes, and thereon alleges, that the  
11 2011/2012 Annual Report uploaded to the SMARTS Database is not the required Annual  
12 Report for this Facility.

13       269. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator failed to submit an Annual Report for the Facility for the  
15 2011/2012 reporting year.

16       2012/2013 Annual Report

17       270. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
19 observations of unauthorized non-storm water discharges for each of its drainage areas in  
20 the 2012/2013 Annual Report.

21       271. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 Owner and/or Operator failed to indicate the location of non-storm water visual  
23 observations to document which discharge areas were observed in the 2012/2013 Annual  
24 Report.

25       272. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner and/or Operator failed to include the required summary of its monthly visual  
27 observations of storm water discharges for each of its discharge points in the 2012/2013  
28

1 Annual Report.

2 273. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 Owner and/or Operator failed to include the required evaluation of its monthly visual  
4 observations of storm water discharges for each of its discharge points in the 2012/2013  
5 Annual Report.

6 274. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
7 Owner and/or Operator failed to include the required summary of the presence of any  
8 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
9 pollutants at the unobserved discharge points in the 2012/2013 Annual Report.

10 275. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 Owner and/or Operator failed to include the required evaluation of the presence of any  
12 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
13 pollutants at the unobserved discharge points in the 2012/2013 Annual Report.

14 276. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 Owner and/or Operator failed to include the required summary of its quarterly visual  
16 observations of unauthorized non-storm water discharges for each of its drainage areas in  
17 the 2012/2013 Annual Report.

18 277. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
20 observations of unauthorized non-storm water discharges for each of its drainage areas in  
21 the 2012/2013 Annual Report.

22 278. In the 2012/2013 Annual Report, the Facility Owner and/or Operator reports  
23 that it was exempt from collecting and analyzing samples from two (2) storm events  
24 because the Facility was participating in an approved group monitoring plan, i.e., the  
25 Building Materials Industry Group Monitoring Plan.

26 279. In the 2012/2013 Annual Report, the Facility Owner and/or Operator reports  
27 that it was scheduled to sample one (1) storm event during the 2010/2011 reporting year.  
28

1        280. In the 2012/2013 Annual Report, the Facility Owner and/or Operator reports  
2 that it sampled zero (0) storm events in the 2010/2011 reporting year.

3        281. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
4 Owner and/or Operator failed to include the required explanation for sampling zero (0)  
5 storm events in the 2012/2013 reporting year.

6        282. In the 2012/2013 Annual Report, the Facility Owner and/or Operator reports  
7 that it sampled zero (0) storm events in the 2012/2013 reporting year because  
8 "Robertson's Ready Mix is a construction based business and during inclement weather  
9 our facility is closed."

10       283. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 operates during storm events.

12       284. Waterkeeper is informed and believes, and thereon alleges, that at least one  
13 (1) qualifying rain event occurred in the 2012/2013 Wet Season.

14       285. Waterkeeper is informed and believes, and thereon alleges, that during the  
15 2012/2013 Wet Season the Facility Owner and/or Operator failed to collect any storm  
16 water samples.

17       286. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 Owner and/or Operator failed to analyze all storm water samples collected for all  
19 required parameters, including pollutants likely to be present in the Facility storm water  
20 discharges in significant quantities, such as aluminum, copper, and zinc, during the  
21 2012/2013 Wet Season.

22       287. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
23 Owner and/or Operator certified that the Facility was in compliance with the Storm  
24 Water Permit in its 2012/2013 Annual Report.

25       288. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner's and/or Operator's certification of compliance in the 2012/2013 Annual Report  
27 was false because it failed to comply with Section B(14) of the 1997 Permit.  
28

1 289. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 Owner's and/or Operator's certification of compliance in the 2012/2013 Annual Report  
3 was false because it reports that the Facility does not operate during "inclement weather"  
4 though the Facility SWPPP states that the Facility operating hours are Monday through  
5 Saturday, 5:00 am to 6:00 pm without qualification.

6 290. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
7 Owner's and/or Operator's certification of compliance in the 2012/2013 Annual Report  
8 was false because the Facility Owner and/or Operator had not revised the Facility  
9 SWPPP to achieve compliance with the Storm Water Permit.

10 291. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 Owner's and/or Operator's certification of compliance in the 2012/2013 Annual Report  
12 was false because the Facility Owner and/or Operator had not revised the Facility M&RP  
13 to achieve compliance with the Storm Water Permit.

14 292. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 Owner and/or Operator failed to describe instances of the Facility's noncompliance with  
16 the Storm Water Permit in its 2012/2013 Annual Report.

17 293. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence  
19 of its noncompliance with the Storm Water Permit in its 2012/2013 Annual Report.

20 2013/2014 Annual Report

21 294. In the 2013/2014 Annual Report, the Facility Owner and/or Operator reports  
22 that it was exempt from collecting and analyzing samples from two (2) storm events  
23 because the Facility was participating in an approved group monitoring plan, i.e., the  
24 Building Materials Industry Group Monitoring Plan.

25 295. In the 2013/2014 Annual Report, the Facility Owner and/or Operator reports  
26 that it was not scheduled to sample one (1) storm event during the 2010/2011 reporting  
27 year.

1       296. Waterkeeper is informed and believes, and thereon alleges, that Facility  
2 Owner and/or Operator failed to include the required summary of its quarterly visual  
3 observations of unauthorized non-storm water discharges for each of its drainage areas in  
4 the 2013/2014 Annual Report.

5       297. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
7 observations of unauthorized non-storm water discharges for each of its drainage areas in  
8 the 2013/2014 Annual Report.

9       298. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner and/or Operator failed to indicate the location of non-storm water visual  
11 observations to document which discharge areas were observed in the 2013/2014 Annual  
12 Report.

13       299. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator failed to include the required summary of its monthly visual  
15 observations of storm water discharges for each of its discharge points in the 2013/2014  
16 Annual Report.

17       300. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 Owner and/or Operator failed to include the required evaluation of its monthly visual  
19 observations of storm water discharges for each of its discharge points in the 2013/2014  
20 Annual Report.

21       301. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 Owner and/or Operator failed to include the required summary of the presence of any  
23 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
24 pollutants at the unobserved discharge points in the 2013/2014 Annual Report.

25       302. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner and/or Operator failed to include the required evaluation of the presence of any  
27 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
28

1 pollutants at the unobserved discharge points in the 2013/2014 Annual Report.

2 303. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 Owner and/or Operator certified that the Facility was in compliance with the Storm  
4 Water Permit in its 2013/2014 Annual Report.

5 304. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 Owner's and/or Operator's certification of compliance in the 2013/2014 Annual Report  
7 was false because it failed to comply with each of the requires of Section B of the 1997  
8 Permit.

9 305. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner's and/or Operator's certification of compliance in the 2013/2014 Annual Report  
11 was false because it reports that the Facility does not operate during "inclement weather"  
12 though the Facility SWPPP states that the Facility operating hours are Monday through  
13 Saturday, 5:00 am to 6:00 pm without qualification.

14 306. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 does operate during storm events.

16 307. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
17 Owner's and/or Operator's certification of compliance in the 2013/2014 Annual Report  
18 was false because the Facility Owner and/or Operator had not revised the Facility  
19 SWPPP to achieve compliance with the Storm Water Permit.

20 308. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
21 Owner's and/or Operator's certification of compliance in the 2013/2014 Annual Report  
22 was false because the Facility Owner and/or Operator had not revised the Facility M&RP  
23 to achieve compliance with the Storm Water Permit.

24 309. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
25 Owner and/or Operator failed to describe instances of the Facility's noncompliance with  
26 the Storm Water Permit in its 2013/2014 Annual Report.

27 310. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
28

1 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence  
2 of its noncompliance with the Storm Water Permit in its 2013/2014 Annual Report.

3 2014/2015 Annual Report

4 311. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 Owner and/or Operator failed to submit an Annual Report for the Facility for the  
6 2014/2015 reporting year.

7 2015/2016 Annual Report

8 312. Waterkeeper is informed and believes, and thereon alleges, that no later than  
9 July 15, 2016, pursuant to Section XVI of the 2015 Permit, the Facility Owner and/or  
10 Operator was required to certify and submit via SMARTS a 2015/2016 Annual Report  
11 using the standardized format and checklists in SMARTS.

12 313. Waterkeeper is informed and believes, and thereon alleges, that the publicly  
13 available portion of the SMARTS database for the Facility does not include a 2015/2016  
14 Annual Report for the Facility for the 2015/2016 reporting year.

15 **V. CLAIMS FOR RELIEF**

16 **FIRST CAUSE OF ACTION**

17 **Defendant's Discharges of Contaminated Storm Water in Violation**  
18 **of the Storm Water Permit Effluent Limitations and the Clean**  
19 **Water Act.**

20 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

21 314. Waterkeeper incorporates the allegations contained in the above paragraphs  
22 as though fully set forth herein.

23 315. Waterkeeper is informed and believes, and thereon alleges, that Defendant  
24 failed and continues to fail to reduce or prevent pollutants associated with industrial  
25 activities at the Facility from discharging from the Facility through implementation of  
26 BMPs that achieve BAT/BCT.

27 316. Waterkeeper is informed and believes, and thereon alleges, that discharges  
28 of storm water containing levels of pollutants that do not achieve compliance with

1 BAT/BCT standards from the Facility occur every time storm water discharges from the  
2 Facility. Defendant's failure to develop and/or implement BMPs that achieve the  
3 pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation of  
4 the Storm Water Permit and the CWA. *See* 1997 Permit, Effluent Limitation B(3); 2015  
5 Permit, Section I(D) (Finding 32), Effluent Limitation V(A); 33 U.S.C. § 1311(b).

6 317. The Facility Owner and/or Operator violates and will continue to violate the  
7 Storm Water Permit Effluent Limitations each and every time storm water containing  
8 levels of pollutants that do not achieve BAT/BCT standards discharges from the Facility.

9 318. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner's and/or Operator's violations of Effluent Limitations of the Storm Water Permit  
11 and the Clean Water Act are ongoing and continuous.

12 319. Each and every violation of the Storm Water Permit Effluent Limitations is a  
13 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

14 320. By committing the acts and omissions alleged above, the Facility Owner  
15 and/or Operator is subject to an assessment of civil penalties for each and every violation  
16 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
17 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

18 321. An action for injunctive relief is authorized by CWA Section 505(a),  
19 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above  
20 would irreparably harm Waterkeeper, its members, and the citizens of the State of  
21 California, for which harm Waterkeeper has no plain, speedy, or adequate remedy at law.

22 322. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
23 an actual controversy exists as to the rights and other legal relations of the Parties.

24 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
25 hereafter.  
26  
27  
28

**SECOND CAUSE OF ACTION**

**Defendant's Discharges of Contaminated Storm Water in Violation  
of Storm Water Permit Receiving Water Limitations and the Clean  
Water Act.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

323. Waterkeeper incorporates the allegations contained in the above paragraphs as though fully set forth herein.

324. Waterkeeper is informed and believes, and thereon alleges, that discharges of storm water containing levels of pollutants that adversely impact human health and/or the environment from the Facility occur each time storm water discharges from the Facility.

325. Waterkeeper is informed and believes, and thereon alleges, that storm water containing levels of pollutants that cause or contribute to exceedances of water quality standards has discharged and continues to discharge from the Facility each time storm water discharges from the Facility.

326. The Facility Owner and/or Operator violates and will continue to violate the Storm Water Permit Receiving Water Limitations each and every time storm water containing levels of pollutants that adversely impact human health and/or the environment, and that cause or contribute to exceedances of WQS, discharges from the Facility.

327. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner's and/or Operator's violations of Receiving Water Limitations of the Storm Water Permit and the CWA are ongoing and continuous.

328. Each and every violation of the Storm Water Permit Receiving Water Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

329. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation

1 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
2 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

3 330. An action for injunctive relief under the Clean Water Act is authorized by  
4 Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions  
5 alleged above would irreparably harm Waterkeeper, Waterkeeper's members, and the  
6 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
7 remedy at law.

8 331. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
9 an actual controversy exists as to the rights and other legal relations of the Parties.

10 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
11 hereafter.

12 **THIRD CAUSE OF ACTION**

13 **Defendant's Discharges of Non-Storm Water in Violation of the**  
14 **Storm Water Permit and the Clean Water Act.**

15 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

16 332. Waterkeeper incorporates the allegations contained in the above paragraphs  
17 as though fully set forth herein.

18 333. Waterkeeper is informed and believes, and thereon alleges, that prohibited  
19 non-storm water discharges from the Facility occur due to inadequate BMP development  
20 and/or implementation necessary to prevent these discharges, including during concrete  
21 and water truck filling, truck washing and cleaning activities.

22 334. Waterkeeper is informed and believes, and thereon alleges, that prohibited  
23 non-storm water discharges have discharged and continue to discharge from the Facility,  
24 in violation of the Storm Water Permit and/or CWA Section 301(a). 33 U.S.C. § 1311(a).

25 335. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner's and/or Operator's violations of Discharge Prohibitions of the Storm Water  
27 Permit are ongoing and continuous.  
28

1       336. Each and every violation of the Storm Water Permit's Discharge  
2 Prohibitions is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C.  
3 § 1311(a).

4       337. By committing the acts and omissions alleged above, the Facility Owner  
5 and/or Operator is subject to an assessment of civil penalties for each and every violation  
6 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
7 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

8       338. An action for injunctive relief under the CWA is authorized by 33 U.S.C.  
9 § 1365(a). Continuing commission of the acts and omissions alleged above would  
10 irreparably harm Waterkeeper, Waterkeeper's members, and the citizens of the State of  
11 California, for which harm they has no plain, speedy, or adequate remedy at law.

12       339. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
13 an actual controversy exists as to the rights and other legal relations of the Parties.

14       WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
15 hereafter.

16                                   **FOURTH CAUSE OF ACTION**

17                   **Defendant's Failure to Adequately Develop, Implement, and/or**  
18                   **Revise a Storm Water Pollution Prevention Plan in Violation of the**  
19                   **Storm Water Permit and the Clean Water Act.**

20                   **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

21       340. Waterkeeper incorporates the allegations contained in the above paragraphs  
22 as though fully set forth herein.

23       341. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
24 Owner and/or Operator has failed and continues to fail to develop an adequate SWPPP  
25 for the Facility, in violation of the Storm Water Permit.

26       342. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
27 Owner and/or Operator has failed and continues to fail to adequately implement a  
28

1 SWPPP for the Facility, in violation of the Storm Water Permit.

2 343. Waterkeeper is informed and believes, and thereon alleges, that Facility  
3 Owner and/or Operator has failed and continues to fail to adequately revise a SWPPP for  
4 the Facility, in violation of the Storm Water Permit.

5 344. The Facility Owner and/or Operator has been in violation of the Storm  
6 Water Permit at the Facility every day from June 3, 2011, to the present.

7 345. The Facility Owner's and/or Operator's violations of the Storm Water  
8 Permit and the CWA at the Facility are ongoing and continuous.

9 346. The Facility Owner and/or Operator will continue to be in violation of the  
10 Storm Water Permit and the CWA each and every day the Facility Owner and/or  
11 Operator fails to adequately develop, implement, and/or revise the SWPPP for the  
12 Facility.

13 347. Each and every violation of the Storm Water Permit SWPPP requirements at  
14 the Facility is a separate and distinct violation of the CWA.

15 348. By committing the acts and omissions alleged above, the Facility Owner  
16 and/or Operator is subject to an assessment of civil penalties for each and every violation  
17 of the CWA occurring from June 3, 2011 to the present, pursuant to Sections 309(d) and  
18 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

19 349. An action for injunctive relief under the CWA is authorized by Section  
20 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and  
21 omissions alleged above would irreparably harm Waterkeeper, its members, and the  
22 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
23 remedy at law.

24 350. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
25 an actual controversy exists as to the rights and other legal relations of the Parties.

26 WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth  
27 hereafter.

**FIFTH CAUSE OF ACTION**

**Defendant's Failure to Adequately Develop, Implement, and/or  
Revise a Monitoring and Reporting Plan in Violation of the Storm  
Water Permit and the Clean Water Act.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

351. Waterkeeper incorporates the allegations contained in the above paragraphs as though fully set forth herein.

352. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to develop an adequate M&RP for the Facility, in violation of the Storm Water Permit.

353. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to adequately implement an M&RP for the Facility, in violation of the Storm Water Permit.

354. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to adequately revise an M&RP for the Facility, in violation of the Storm Water Permit.

355. The Facility Owner and/or Operator has been in violation of the Storm Water Permit's monitoring requirements at the Facility every day from June 3, 2011, to the present.

356. The Facility Owner's and/or Operator's violations of the Storm Water Permit's monitoring requirements and the CWA at the Facility are ongoing and continuous.

357. The Facility Owner and/or Operator will continue to be in violation of Section B and Provision E(3) the 1997 Permit, Section XI of the 2015 Permit, and the CWA each and every day it fails to adequately develop, implement, and/or revise an M&RP for the Facility.

358. Each and every violation of the Storm Water Permit M&RP requirements at the Facility is a separate and distinct violation of the CWA.

359. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

360. An action for injunctive relief under the CWA is authorized by Section 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Waterkeeper, its members, and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

361. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth hereafter.

## SIXTH CAUSE OF ACTION

**Defendant's Failure to Report as Required by the Storm Water Permit in Violation of the Storm Water Permit and the Clean Water Act.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

362. Waterkeeper incorporates the allegations contained in the above paragraphs as though fully set forth herein.

363. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to submit accurate Annual Reports to the Regional Board, in violation of Sections B(14), C(9), and C(10) of the 1997 Permit.

364. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner's and/or Operator's Annual Reports failed to meet the monitoring and reporting requirements of the Storm Water Permit, in violation of Section B(14) of the 1997 Permit.

1        365. Waterkeeper is informed and believes, and thereon alleges, that based on the  
2 above-described violations of the Storm Water Permit the Facility Owner's and/or  
3 Operator's annual reports submitted pursuant to the 2015 Permit will fail to meet the  
4 requirements of Section XVI(B) of the 2015 Permit.

5        366. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 Owner and/or Operator has failed to submit complete Annual Reports to the Regional  
7 Board, in violation of Sections B(14), C(9), C(10) and C(11) of the 1997 Permit.

8        367. The Facility Owner and/or Operator has been in violation of Sections B(14),  
9 C(9), C(10), and/or C(11) of the 1997 Permit and CWA every day since at least June 3,  
10 2011.

11        368. The Facility Owner's and/or Operator's violations of the reporting  
12 requirements of the Storm Water Permit and the CWA are ongoing and continuous.

13        369. By committing the acts and omissions alleged above, the Facility Owner  
14 and/or Operator is subject to an assessment of civil penalties for each and every violation  
15 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
16 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

17        370. An action for injunctive relief under the CWA is authorized by Section  
18 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and  
19 omissions alleged above would irreparably harm Waterkeeper, its members, and the  
20 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
21 remedy at law.

22        371. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
23 an actual controversy exists as to the rights and other legal relations of the Parties.

24        WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth  
25 hereafter.

26 **VI. RELIEF REQUESTED**

27        372. Plaintiff respectfully request that this Court grant the following relief:  
28

1 a. A Court order declaring the Defendant to have violated and to be in  
2 violation of Sections 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and  
3 (b); for discharging pollutants from the Facility in violation of a permit issued pursuant to  
4 Section 402(p) of the CWA, 33 U.S.C. § 1342(p); for failing to meet effluent limitations  
5 which include BAT/BCT requirements; and for failing to comply with the substantive  
6 and procedural requirements of the Storm Water Permit.

7 b. A Court order enjoining Defendant from discharging pollutants not in  
8 compliance with an NPDES permit;

9 c. A Court order requiring Defendant to implement affirmative injunctive  
10 measures designed to eliminate Defendant's violations of the substantive and procedural  
11 requirements of the Storm Water Permit and the Clean Water Act;

12 d. A Court order assessing civil monetary penalties for each violation of the  
13 CWA at \$37,500 per day per violation for violations occurring since June 3, 2011, as  
14 permitted by CWA Section 309(d), 33 U.S.C. § 1319(d) and Adjustment of Civil  
15 Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009);

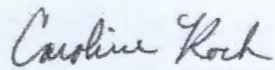
16 e. A Court order awarding Plaintiff their reasonable costs of suit, including  
17 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the Clean  
18 Water Act, 33 U.S.C. § 1365(d); and

19 f. Any other relief as this Court may deem appropriate.  
20

21 Dated: August 3, 2016

Respectfully submitted,

22 LAWYERS FOR CLEAN WATER, INC.

23 

24 Caroline Koch

25 Attorney for Plaintiffs

26 Inland Empire Waterkeeper and Orange  
27 County Coastkeeper  
28

**Exhibit A**



**Inland Empire Waterkeeper**

*Advocacy • Education • Restoration • Enforcement*

6876 Indiana Avenue, Suite D

Riverside, CA 92506

Phone (951) 530-8823

Fax (951) 530-8824

Website [www.iewaterkeeper.org](http://www.iewaterkeeper.org)

June 3, 2016

**VIA CERTIFIED MAIL**

Robertson's Ready Mix  
Robertson's San Jacinto Batch Plant  
1675 S. State St.  
San Jacinto, CA 92383

Robertson's Ready Mix, Ltd.,  
a California Limited Partnership  
200 S. Main Street, Suite 200  
Corona, California 92882-2212

Mervyn Encarnacion, Registered Agent for  
Service of Process for Robertson's Ready Mix,  
Ltd., a California Limited Partnership  
200 S. Main Street, Suite 200  
Corona, California 92882-2212

**Re: Notice of Violation and Intent to File Suit Under the Clean Water Act**

To Whom It May Concern:

I am writing on behalf of Inland Empire Waterkeeper and Orange County Coastkeeper (collectively "Waterkeeper") regarding violations of the Clean Water Act<sup>1</sup> and California's Industrial Storm Water Permit<sup>2</sup> ("Storm Water Permit") occurring at the industrial facility with its main address at: 1675 S. State St., San Jacinto, California 92383 ("Facility"). The purpose of this letter is to put San Jacinto Batch Plant and Robertson's Ready Mix, Ltd., a California Limited Partnership, (collectively "Robertson's"), as the owners and/or operators of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Robertson's is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the chief administrative officer of the water pollution control agency for the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

<sup>2</sup> National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS0000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ.

This letter is being sent to you as the responsible owner and operator of the Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Robertson's that Waterkeeper intends to file a federal enforcement action against Robertson's for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

## **I. BACKGROUND**

### **A. Inland Empire Waterkeeper and Orange County Coastkeeper**

Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D, Riverside, California 92506. Inland Empire Waterkeeper is a program of Orange County Coastkeeper. Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Together, Inland Empire Waterkeeper and Orange County Coastkeeper have over 2,000 members who live and/or recreate in and around the Santa Ana River watershed. Waterkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Inland Empire watershed. To further these goals, Waterkeeper actively seeks federal and state agency implementation of the Clean Water Act and other environmental regulations, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper use and enjoy the waters that Robertson's discharges into, including the Santa Ana River and its tributaries. Members of Waterkeeper use and enjoy the Santa Ana River and its tributaries to swim, wade, picnic, hike, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants and emissions of fugitive dust from the Facility impairs each of these uses. Further, discharges of polluted storm water and fugitive dust emissions from the Facility are ongoing and continuous. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by Robertson's failure to comply with the Clean Water Act and the Storm Water Permit.

### **B. The Owners and/or Operators of the Facility**

Information available to Waterkeeper indicates that Robertson's Ready Mix, Ltd., is an owner and/or operator of the Facility. Robertson's Ready Mix, Ltd. is an active California limited partnership and its registered agent is: Mervyn Encarnacion, 200 S. Main Street, Suite 200, Corona, California 92882. Pursuant to California Corporations Code section 15904.04, Robertson's Ready Mix, Ltd.'s general partners are jointly and severally liable for the Clean Water Act violations described herein. Further, to the extent Robertson's Ready Mix, Ltd.'s limited partners own and/or operate the Facility together with Robertson's Ready Mix, Ltd.

Waterkeeper refers to Robertson's San Jacinto Batch Plant and Robertson's Ready Mix, Ltd. together as the "Facility Owners and/or Operators." The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

**C. The Facility's Storm Water Permit Coverage**

Facilities that discharge storm water associated with specified industrial activities are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding ¶¶ 12, 17.

Robertson's submitted an NOI to obtain Storm Water Permit coverage for the Facility on March 30, 1992. The NOI submitted in March 1992 ("1992 NOI") identifies the owner/operator of the Facility as "Robertson's Ready Mix" and the Facility name and location as "San Jacinto Batch Plant, 1675 S. State St., San Jacinto, CA 92343." The 1992 NOI lists the Facility as 4 acres in size and the 57% impervious.<sup>3</sup> The 1992 NOI states the Facility is "Regulated by Storm water Effluent Guidelines (40 CFR Subchapter N)". Additionally, it states the Facility's storm water discharges directly to a storm drain system and the closes receiving water as the San Jacinto River. It lists the materials handled and/or stored outdoors as petroleum products-diesel; sand and gravel; and Portland cement.

Robertson's submitted an NOI to obtain Storm Water Permit coverage for the Facility on June 6, 1997. The NOI submitted in June 1997 ("1997 NOI") identifies the owner/operator of the Facility as "Robertson's Ready Mix" and the Facility name and location as "San Jacinto Batch Plant, 1675 S. State St., San Jacinto, CA 92343." The 1997 NOI lists the Waste Discharge Identification ("WDID") number for the Facility as 8 33S005071.

On September 29, 2015, Robertson's submitted an NOI to continue the Facility's coverage under the Permit ("2015 NOI"). The 2015 NOI identifies the owner/operator of the Facility as "Robertsons Ready Mix" and the Facility name and location as "Robertsons San Jacinto Plant, 1675 State St., San Jacinto, CA 92383." The 2015 NOI lists the Facility site size as "4 Acres." The industrial area exposed to storm water is listed as "19600 Sq.Feet", and the percentage of imperviousness is not listed.<sup>4</sup> The 2015 NOI lists the WDID number for the Facility as 8 33I005071.

The 1992 and 2015 NOIs list the Standard Industrial Classification ("SIC") code for the Facility as 3273 (Ready-Mixed Concrete). SIC code 3273 facilities must obtain Storm Water Permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2. Information available to Waterkeeper, including the Facility's Storm Water Pollution Prevention Plan ("SWPPP")<sup>5</sup> identifying

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<sup>3</sup> The 2014/2015 Building Materials Industry Group Monitoring Plan confirmed the Facility was 57% impervious.

<sup>4</sup> To the extent the Facility Owners and/or Operators have or intend to limit the Storm Water Permit coverage at the Facility based on the asserted acreage "exposed to storm water," Waterkeeper puts the Facility Owners and/or Operators on notice that they have not complied, and cannot comply, with Section XVII.E.1. of the Storm Water Permit and the required "no exposure" certification. Further, to the extent the Facility Owners and/or Operators failed to obtain Permit coverage for all areas of industrial activity at the Facility, storm water discharges associated with industrial activities from unpermitted portions of the Facility violate section 301(a) of the Clean Water Act.

<sup>5</sup> The Facility SWPPP publicly available via the SMARTS database is labeled "March 2015" and is signed by the Facility's "legally responsible person" on September 30, 2015. Waterkeeper also

vehicle and equipment maintenance and storage as industrial activities at the Facility, indicates SIC code 4212 (local trucking without storage) also applies to the Facility.

The Facility SWPPP also states that the Facility is approximately 4.1 acres. To the extent the Facility Owners and/or Operators have failed to obtain Permit coverage for the entire Facility by describing the Facility as 4 acres in the 1992 NOI and the 2015 NOI, Waterkeeper puts the Facility Owners and/or Operators on notice that discharges from the Facility not in compliance with the Storm Water Permit violate section 301(a) of the Clean Water Act.

**D. Storm Water Pollution and the Waters Receiving Robertson's Discharges**

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Based on EPA's Industrial Stormwater Fact Sheet for Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from concrete mixing facilities such as the Facility contain pH-affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

The Facility SWPPP indicates the Facility discharges into a storm drain system on State Street, "which directs runoff to Warm Springs Creek and downstream bodies" and to Murrieta Creek, Santa Margarita River (Upper). However, information available to Waterkeeper indicates the Facility discharges into the municipal storm drain system ultimately discharge to the San Jacinto River, Canyon Lake, Lake Elsinore, Temescal Creek Reach 6, Reach 5, Reach 4, Reach 3, Reach 2, Reach 1B, Reach 1A, Santa Ana River Reach 3, Reach 2, Reach 1, Tidal Prism of Santa Ana River, and finally into the Pacific Ocean ("Receiving Waters"). Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

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obtained the March 2015 SWPPP via a Public Records Act request. Waterkeeper understands that the March 2015 SWPPP is the current SWPPP for the Facility.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include Water Contact Recreation; Non-contact Water Recreation; Agricultural Supply; Groundwater Recharge; Warm Freshwater Habitat; Wildlife Habitat; Rare, Threatened or Endangered Species; and Spawning, Reproduction and Development. See Basin Plan at Table 3-1.

According to the 2012 303(d) List of Impaired Water Bodies, Canyon Lake is impaired for nutrients and pathogens; Temescal Creek Reach 1 is impaired for pH; Temescal Creek Reach 6 is impaired for Indicator Bacteria; Santa Ana River Reach 3 is impaired for pathogens, Copper, and Lead, and Santa Ana River Reach 2 is impaired for Indicator Bacteria.

Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

## II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

### A. The Facility Site Description and Industrial Activities

The Facility is an active concrete batch plant consisting of one section of approximately 4.1 acres. Raw materials, including aggregate (rock, sand, and gravel), cement,<sup>6</sup> fly ash, and admixtures are delivered to the Facility, and are mixed with water to create concrete. These materials, water, and (if applicable) admixtures are added to concrete haul trucks that mix the ingredients together to produce concrete and haul the concrete off site. As part of the concrete production process, unused concrete is returned to the Facility, stored onsite, and recycled. The concrete production process also includes onsite vehicle and mobile equipment operation, parking, fueling, and maintenance.

The Facility's industrial activities include, but are not limited to: concrete mixing; transport of raw materials; unloading of raw materials; outdoor storage of raw materials, including sand, gravel, rock, chemical admixtures, fly ash, cement, and recycled concrete; fueling, repairing, cleaning, and maintaining vehicles and equipment; storage of fuels and hazardous materials, such as diesel fuel, lubricating fluids, new vehicle fluids, and hazardous waste vehicle fluids; washing concrete mixer trucks; and vehicle and equipment parking, fueling, and maintenance.

Information available to Waterkeeper indicates that up to 5000 tons of aggregate, up to 80 tons of cement, up to 80 tons of fly ash, and up to 6800 gallons of admixtures, may be in process or storage at the Facility at any one time. Additionally, up to 10,300 gallons of fuels, oils, and greases may be stored at the Facility at any one time.

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<sup>6</sup> Based on Waterkeeper's review of the Facility SWPPP, cement is stored in "cement storage silos" in the concrete batch plant area of the Facility, and that cement is received in this area. To the extent cement is stored outdoors, storm water discharges from the Facility may be subject to additional effluent limitations set out at 40 C.F.R. § 411.30. Waterkeeper will add additional information and/or violations relevant to the Facility Owners and/or Operators' storage and handling of cement as that information becomes available to Waterkeeper.

**B. Pollutants Associated with Robertson's Industrial Activities**

Information available to Waterkeeper indicates that pollutants associated with operations at the Facility include, but are not limited to: pH-affecting substances<sup>7</sup>; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, and arsenic; COD; BOD; TSS<sup>8</sup>; benzene; gasoline and diesel fuels; fuel additives; coolants; trash; and O&G.

Information available to Waterkeeper indicates Robertson's has not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources and contaminated discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. Consequently, during rain events, storm water carries pollutants from the Facility's stockpile or material storage area(s), truck parking area(s), fueling and maintenance area(s), add-mix area(s), batch plant area(s), washing area(s), and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

Information available to Waterkeeper also indicates that concrete, particulates, and fugitive dust of sand, gravel, and cement have been and continue to be tracked throughout the Facility. These pollutants accumulate at the sand and gravel storage areas and near the silos, the loading and unloading areas, and the driveways leading onto State Street. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, O&G, metal particles, and other pollutants off-site.

Information available to Waterkeeper indicates that raw materials are stored outside and weighing and mixing activities occur outside without adequate cover or containment resulting in discharges of polluted storm water and fugitive dust emissions. Additionally, metal parts and hazardous materials associated with maintenance, fueling, and washing of the concrete trucks are located outside without secondary containment or other measures to prevent polluted storm water and prohibited non-storm water discharges from discharging from the Facility. These activities are all pollutant sources at the Facility.

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<sup>7</sup> Storm water discharged with high pH can damage the gills and skin of aquatic organisms and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a substance varies as a function of the pH of a solution. A one whole unit change in SU represents a tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic organisms living within it will become stressed or die.

<sup>8</sup> High concentrations of TSS degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

Robertson's failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act. Information available to Waterkeeper indicates that Robertson's discharges process waters from equipment washing and other activities as part of its industrial operations.

### **C. Facility Storm Water Flows and Discharge Location**

The Facility SWPPP states the site is approximately 35% pervious and is considered three (3) drainage areas labeled Drainage Area 1 (DA1), Drainage Area 2 (DA2), and Drainage Area 3 (DA3). The Facility Owners and/or Operators identify two (2) discharge points, Outfall 1 ("OF1") and Outfall 2 ("OF2"). Outfall #1 is located at the northern driveway, or Facility exit. Outfall #2 is located at the southern driveway, or Facility entrance.

The Facility's SWPPP states that DA1 includes the entire site. The SWPPP states that, "Storm water flows into the sump at the center of the plant, where it is contained and pumped back to the plant for re-use. The storm water from [DA2] and [DA3] is potentially impacted by industrial activity" and thus, Outfalls 1 and 2 are to be sampled. Additionally, the SWPPP provides no sizing information for the sump.

## **III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT**

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Waterkeeper refers to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued. For purposes of this Notice Letter, Waterkeeper refers to the reissued permit as the "2015 Permit." The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, Robertson's is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect").

The Clean Water Act requires that any person discharging pollutants to a water of the United States from a point source<sup>9</sup> obtain coverage under an NPDES permit. *See* 33 U.S.C.

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<sup>9</sup> A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or

§§ 1311(a), 1342; 40 CFR § 122.26(c)(1). The Storm Water Permit is an NPDES permit which regulates storm water discharges associated with certain industrial activities. The Robertson's Owners and/or Operators discharge pollutants from point sources at the Facility to waters of the United States without NPDES permit coverage in violation of Section 301(a) of the Clean Water Act.

In California, industrial dischargers not covered under an individual NPDES permit must comply with the terms of the Storm Water Permit to lawfully discharge storm water associated with industrial activity. *See id.*; *see also* 1997 Permit, Fact Sheet p. VII; 2015 Permit, Fact Sheet, p. 9. Industrial activities conducted at the Facility fall under SIC codes 3273, which require Robertson's obtain Storm Water Permit coverage for the entire Facility.

**A. Unauthorized Non-Storm Water Discharges from the Facility in Violation of Storm Water Permit Discharge Prohibitions**

Except as authorized by Special Conditions D(1) of the 1997 Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III.B. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* Storm Water Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B.

Information available to Waterkeeper indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges from the Facility during concrete and water truck filling, road watering, and/or when truck washing and cleaning activities occur. The Facility Owners and/or Operators conduct these activities without BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the Storm Water Permit and thus are always prohibited.

Waterkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Discharge Prohibitions are violated each time unauthorized non-storm water is discharged from the Facility. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B. These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Waterkeeper will update the number and dates of violations when additional information becomes available. Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

**B. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitations**

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic<sup>10</sup> and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.<sup>11</sup> The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A.

Information available to Waterkeeper, including its review of publicly available information and observations, indicates that the Facility Owners and/or Operators have not implemented BMPs at the Facility that achieve BAT/BCT. While the Facility Owners and/or Operators have not collected any storm water samples, storm water associated with industrial activities regulated by the permit does discharge from the Facility, and given the inadequate BMPs at the Facility, those discharges violate the permit effluent limitations.

Waterkeeper will provide additional information regarding this violation as it becomes available, including evaluation of storm water data (once available) as compared to storm water benchmark levels set by the Environmental Protection Agency. Such EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit.<sup>12</sup>

Information available to Waterkeeper indicates that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards. Waterkeeper puts the Facility Owners and/or Operators on notice that because of the lack of BMPs that meet BAT/BCT standards, the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 1 (setting forth dates of rain events resulting in a discharge at the Facility).<sup>13</sup> These discharge violations are ongoing and will continue every time Robertson's discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time Robertson's discharges polluted storm water in violation of Effluent

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<sup>10</sup> Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, arsenic, lead, benzene, and zinc, among others.

<sup>11</sup> Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

<sup>12</sup> *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

<sup>13</sup> Dates of significant rain events are measured at Rain Station KRAL, located at the Riverside Municipal Airport in Riverside, California, and at Rain Station KRIV, located at March Air Reserve Base. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

Further, Waterkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Effluent Limitation V.A. is a separate, independent requirement with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. The NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.<sup>14</sup> And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

**C. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations**

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").<sup>15</sup> The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of an applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

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<sup>14</sup> "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

<sup>15</sup> The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

Information available to Waterkeeper indicates that while the Facility Owners and/or Operators have not collected any storm water samples, storm water associated with industrial activities regulated by the Storm Water Permit does discharge from the Facility, and given the inadequate BMPs at the Facility, those discharges violate the receiving water limitations.

As explained herein, the Receiving Waters are impaired for some of the same pollutants discharging from the Facility and thus unable to support the designated beneficial uses. The 2012 303(d) List of Impaired Water Bodies lists the Receiving Waters as impaired for pH, pathogens, and Indicator Bacteria. Information available to Waterkeeper indicates that facilities of this type often discharge storm water which contains elevated concentrations of pollutants, such as aluminum, iron, copper, lead, and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from this type of facility also adversely impact human health. Waterkeeper will provide additional information regarding this violation as it becomes available, including an evaluation of storm water data (once available) as compared to CTR criteria and Basin Plan objectives. These types of harmful discharges are violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1) and C(2); 2015 Permit, Receiving Water Limitation VI.A and VI.B.

Waterkeeper puts the Facility Owners and/or Operators on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.*, Exhibit 1 (setting forth dates of rain events resulting in a discharge at the Facility). These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Waterkeeper will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

Further, Waterkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality based criteria relevant to determine whether an industrial facility has caused or contributed to an exceedance of a water quality standard.<sup>16</sup> And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to

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<sup>16</sup> "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

**D. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan**

The Storm Water Permit requires permittees to develop and implement Storm Water Pollution Prevention Plans prior to conducting, and in order to continue, industrial activities. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

**1. 1997 SWPPP Requirements**

Section A(1) and Provision E(2) of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the 1997 Permit SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

**2. 2015 SWPPP Requirements**

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs

to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutants control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Section X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit SWPPP Requirements

Information available to Waterkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, in violation of Section A(4) of the 1997 Permit and Section X(E)(3) of the 2015 Permit, there is no site map attached to the SWPPP. To the extent the site map uploaded on SMARTS could be the SWPPP site map it fails to identify all areas of industrial activity, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, and nearby water bodies.

Further, the narrative portions of the SWPPP fail to include all sources of unauthorized non-storm water discharges in violation of Section A(6) of the 1997 Permit and Section X(G)(1)(e) of the 2015 Permit. The SWPPP also fails to include an adequate assessment of potential pollutant sources or BMPs that achieve the BAT/BCT standards, as required by Section A(6) of the 1997 Permit and Sections X(G) and X(H) of the 2015 Permit.

To the extent there are areas of the Facility where industrial activities, in fact, do not occur, the Facility Owners and/or Operators have failed to comply with the certification requirements set out at Section XVII(E)(1) of the 2015 Permit that would allow Robertson's to exclude certain areas from its storm water management program. Nor have the Facility Owners and/or Operators revised

the Facility SWPPP, as required by Section A(7) of the 1997 Permit and Section X(D)(2)(a) of the 2015 Permit.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise the SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least June 3, 2011. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

**E. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program**

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

**1. 1997 Permit Requirements**

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

The Facility was and/or is a member of the Building Materials Industry Group Monitoring Program, and thus the Facility Owners and/or Operators must comply with the group monitoring provisions set forth in Section B(15) of the 1997 Permit. Under Section B(15) of the 1997 Permit, the Facility Owners and/or Operators must collect at least two (2) samples from each discharge point at the Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15). Storm water samples must be analyzed for TSS, pH, specific conductance ("SC"), total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities, such as aluminum and nitrate plus nitrite. *See* Storm Water Permit, Section B(5)(c). The 1997 Permit requires facilities classified as SIC code 3273, such as the Facility, to also analyze storm water samples for iron. *Id.*; *see also* 1997 Permit, Table D, Sector E.

Section B(7)(d) of the 1997 Permit allows for the reduction of sampling locations in very limited circumstances when "industrial activities and BMPs within two or more drainage areas are substantially identical." If a discharger seeks to reduce sampling locations, the "[f]acility operators must document such a determination in the annual report." *Id.*

## 2. 2015 Permit Requirements

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency to the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event<sup>17</sup> as follows: 1) from each discharge location, 2) from two storm events within the first half of each reporting year<sup>18</sup> (July 1 to December 31), 3) from two storm events within the second half of each reporting year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other

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<sup>17</sup> The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

<sup>18</sup> A reporting year is defined as July 1 through June 30, 2015 Permit, Findings, ¶ 62(b).

requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event.

The parameters to be analyzed are also consistent with the 1997 Permit, except the 2015 Permit no longer requires SC be sampled. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial operations. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit M&RP Requirements

The Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Facility Owners and/or Operators have failed and continue to fail to develop an M&RP that requires the Facility Owners and/or Operators to analyze storm water discharges from the Facility for all required parameters by failing to specify that storm water discharges will be analyzed for, at a minimum, aluminum, lead, zinc, cadmium, chromium, copper, arsenic, COD, and BOD, in violation of Section B(5)(c) of the 1997 Permit and Section XI(B)(6)(c) of the 2015 Permit. Nor have the Facility Owners and/or Operators developed an M&RP that requires analysis for pollutants listed on the 2012 303(d) list that are associated with the industrial activities at the Facility, including pH, in violation of Section XI(B)(6) of the 2015 Permit. In addition, the Facility Owners and/or Operators failed and continue to fail to develop an M&RP that requires that the applicable test methods be used when analyzing storm water samples from the Facility.

The Facility Owners and/or Operators also failed to collect and analyze storm water samples as required by the Storm Water Permit. For example, for the past five (5) years the Facility Owners and/or Operators have not collected storm water samples as was required in violation of Sections B(5), B(7), and B(15) of the 1997 Permit and Section XI of the 2015 Permit. Specifically, pursuant to the applicable group monitoring plan, the Facility Owners and/or Operators were required to collect samples in the 2014/2015 wet season.

Further, at Sections 10.4.7 and 10.4.8 the Facility SWPPP states that the Facility Owners and/or Operators will both combine storm water samples and reduce the number of locations to be sampled in each drainage area if the industrial activities and BMPs in the area are similar. The Facility Owners and/or Operators have failed and continue to fail to meet the requirements of Sections XI(C)(4) and XI(C)(5) related to representative sampling reduction and qualified combined samples.

The Facility Owners' and/or Operators' failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of the Storm Water Permit. Every day that the Facility Owners and/or Operators conduct operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The

Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least June 3, 2011. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

**F. Failure to Comply with the Storm Water Permit's Reporting Requirements**

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. *See* 2015 Permit, Section XVI.

Information available to Waterkeeper indicates that the Facility Owners and/or Operators have failed to submit and/or upload the Facility 2014/2015 Annual Report. Further, the Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with these reporting requirements. For example, in its 2010/2011, 2011/2012, 2012/2013, 2013/2014 Annual Reports, the Facility Owners and/or Operators certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper indicates that these certifications are erroneous. For example, as discussed above, no storm water samples were collected from the Facility. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Facility Owners and/or Operators have also submitted incomplete Annual Reports. For example, in the 2012/2013 and 2013/2014 Annual Reports, as the reason no samples were collected the Facility Owners and/or Operators state that the Facility "is a construction based business and during inclement weather our facility is closed." Not only does information available to Waterkeeper demonstrate that the Facility does operate during storm events, the 1997 Permit and the 2015 Permit do not excuse failures to collect required samples on this basis.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). The Owners and/or Operators have not reported non-compliance as required.

Information available to Waterkeeper indicates that the Facility Owners and/or Operators have failed to submit the 2014/2015 Annual Report, and have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility

Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least June 3, 2011. These violations are ongoing, the 2015 Permit's annual reporting requirements are as stringent as the 1997 Permit requirements, and Waterkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Sections XII. and XVI.). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

#### **IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009.

In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

## V. CONCLUSION

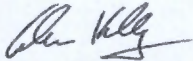
Waterkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Waterkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Robertson's violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Waterkeeper's legal counsel:

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Orange County Coastkeeper  
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Sincerely,



Colin Kelly  
Senior Staff Attorney  
Inland Empire Waterkeeper  
Orange County Coastkeeper

**SERVICE LIST**

*Via U.S. Mail*

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State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812

**Exhibit 1**

Robertson's San Jacinto  
Exhibit 1

<b>Riverside Municipal Airport Riverside, CA Rain Station KRAL</b>		
<b>Date</b>	<b>Day of Week</b>	<b>Daily Precipitation (Inches)</b>
6/31/2011	Sunday	.34
10/5/2011	Wednesday	.46
11/4/2011	Friday	.33
11/12/2011	Saturday	.15
12/12/2011	Monday	.43
1/21/2012	Saturday	.20
1/23/2012	Monday	.21
2/15/2012	Wednesday	.36
3/17/2012	Saturday	.52
4/11/2012	Wednesday	.21
4/13/2012	Friday	.18
12/13/2012	Thursday	.49
12/24/2012	Monday	.22
12/29/2012	Saturday	.13
1/24/2013	Thursday	.19
1/25/2013	Friday	.37
1/26/2013	Saturday	.19
2/8/2013	Thursday	.49
3/8/2013	Friday	.46
<b>Total Rain Days</b>		<b>19</b>

Robertson's San Jacinto  
Exhibit 1

March Air Reserve Base Riverside, CA Rain Station KRIV		
Date	Day of Week	Daily Precipitation (Inches)
7/30/2013	Friday	.38
10/9/2013	Wednesday	.42
11/21/2013	Thursday	.20
11/22/2013	Friday	.15
12/7/2013	Saturday	.18
12/19/2013	Thursday	.18
2/28/2014	Friday	1.08
3/1/2014	Saturday	.43
3/2/2014	Sunday	.25
4/2/2014	Wednesday	.13
4/25/2014	Friday	.16
4/26/2014	Saturday	.18
8/3/2014	Sunday	.20
8/20/2014	Wednesday	.27
11/1/2014	Saturday	.17
12/2/2014	Tuesday	.77
12/3/2014	Wednesday	.51
12/4/2014	Thursday	.28
12/12/2014	Friday	.73
12/13/2014	Saturday	.20
12/17/2014	Wednesday	.13
1/11/2015	Sunday	.12
1/26/2015	Monday	.29
1/30/2015	Friday	.11
2/22/2015	Sunday	.12

Robertson's San Jacinto  
Exhibit 1

2/23/2015	Monday	.19
3/1/2015	Sunday	.12
5/8/2015	Friday	.28
5/14/2015	Thursday	.15
5/15/2015	Friday	.12
7/18/2015	Saturday	.40
7/19/2015	Sunday	.97
9/15/2015	Tuesday	.43
10/5/2015	Monday	.27
10/14/2015	Wednesday	.12
10/15/2015	Thursday	.21
10/22/2015	Tuesday	.14
1/5/2016	Tuesday	.78
1/6/2016	Wednesday	.68
1/7/2016	Thursday	.64
1/31/2016	Sunday	.12
1/17/2016	Wednesday	.10
3/7/2016	Monday	.14
3/11/2016	Friday	.27
4/8/2016	Friday	.22
4/10/2016	Sunday	.49
4/25/2016	Monday	.19
5/6/2016	Friday	.27
	<b>Total Rain Days</b>	<b>48</b>